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सं. 8]

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No. 8]

NEW DELHI, SATURDAY, FEBRUARY 25, 1989/FALGUNA 6, 1910

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में
रखा जा सके

Separate Paging is given to this Part in order that it may be filed as a
separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii) PART II—Section 3—Sub-Section (ii)

(रक्षा मंत्रालय को छोड़ कर) भारत सरकार के मंत्रालयों द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications issued by the Ministries of the Government of India (other than
the Ministry of Defence)

विधि एवं न्याय मंत्रालय

(विधि कार्य विभाग)

सूचना

नई दिल्ली, 16 जनवरी, 1989

का. घा. 360.—नोटरीज नियम, 1956 के नियम 6 के अनुसरण में सक्षम प्राधिकारी द्वारा यह सूचना दी जाती है कि श्री काजी दादा साहिब हुसेन साहिब, अधिवक्ता ने उक्त प्राधिकारी को उक्त नियम के नियम 4 के अधीन एक आवेदन इस बात के लिए दिया है कि उन्हें बेलगाम में व्यवसाय करने के लिए नोटरी के रूप में नियुक्त किया जाए।

2. उक्त व्यक्ति की नोटरी के रूप में नियुक्ति पर किसी भी प्रकार का आपत्ति इस सूचना के प्रकाशन के चौदह दिन के भीतर लिखित रूप में मेरे पास भेजा जाए।

[सं. '5(3)/89-ग्या.]

कृष्ण दत्त सिंह, सक्षम प्राधिकारी

MINISTRY OF LAW AND JUSTICE
(Department of Legal Affairs)

NOTICE

New Delhi the 16th January, 1989

S.O. 360.—Notice is hereby given by the Competent Authority in pursuance of rule 6 of the Notaries Rules 1956.

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that application has been made to the said Authority, under rule 4 of the said Rules, by Sh. Kazi Dadasaheb Hussainsahib, Advocate, for appointment as a Notary to practise in Belgaum.

2. Any objection to the appointment of the said person as a Notary may be submitted in writing to the undersigned within fourteen days of the publication of this Notice.

[No. F. 5(3)/89-JudL.]

K. D. SINGH, Competent Authority

गृह मंत्रालय

नई दिल्ली, 18 जनवरी, 1989

का. घा. 361.—राष्ट्रपति, संविधान के अनुच्छेद 258 के खंड (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए और भारत सरकार के गृह मंत्रालय की अधिसूचना सं. 14013/13/75-एफ III, तारीख 31 अक्टूबर, 1979 (9 अक्टूबर 1901) को उन बातों की भावत अधिष्ठात करते हुए, जिन्हें ऐसे प्रक्रियण से पहले किया गया है या करने का लोप किया गया है, पश्चिम बंगाल सरकार की सहमति से—

(क) पुलिस उपायुक्त, विशेष शाखा कलकत्ता को कलकत्ता शहर के, जैसा कलकत्ता पुलिस अधिनियम, 1866 में परिभाषित है, भीतर और कलकत्ता के उपनगरीय, जैसा कलकत्ता उपनगरीय

पुलिस अधिनियम, 1866 की धारा 1 के अधीन परिभाषित है, क्षेत्र में

(ख) पश्चिम बंगाल में जिला पुलिस अधीक्षकों, डी आई की भार-साधकों को, उनकी अपनी अधिकारिताओं के भीतर;

(ग) अतिरिक्त पुलिस अधीक्षक, डी आई की भारसाधक उत्तर 24 परगना जिला को, उनकी अधिकारिताओं के भीतर;

(घ) अतिरिक्त पुलिस अधीक्षक, डी आई की भारसाधक, दक्षिण 24 परगना जिला को, उसकी अधिकारिता के भीतर विदेशियों विषयक अधिनियम, 1946 (1946 का 31) की धारा 3 की उपधारा (2) के खंड (क), (ख), (ग), (घ), (ङ) और (च) में विनिर्दिष्ट किस्म के आदेश करने में केन्द्रीय सरकार के कृत्यों को करने के लिए निम्नलिखित शर्तों के अधीन रहते हुए, नियन्त्रित करती है, अर्थात् :—

(क) इस प्रकार न्यस्त किए गए कृत्यों का प्रयोग बंगलादेश के राष्ट्रियों के सम्बन्ध में किया जाएगा;

(ख) ऐसे कृत्यों का प्रयोग करने में उक्त अधिकारी ऐसे साधारण या विशेष निदेशों का अनुपालन करेंगे, जो पश्चिम बंगाल सरकार या केन्द्रीय सरकार समय-समय पर जारी करे; और

(ग) इस प्रकार न्यस्त किए जाने में किसी बात के होते हुए भी केन्द्रीय सरकार उक्त कृत्यों में से किसी का प्रयोग स्वयं कर सकेगी यदि किसी दशा में वह ऐसा करना उचित समझती है;

[सं. 14011/5/88-एफ. III]

इन्दिरा मिश्रा, संयुक्त सचिव

MINISTRY OF HOME AFFAIRS

New Delhi, the 18th January, 1989

S.O. 361.—In exercise of the powers conferred by clause (1) of article 258 of the Constitution and in supersession of notification of the Government of India in the Ministry of Home Affairs No. 14013/13/75-F. III dated the 31st October, 1979 (9th Kartik, 1901) as respects things done or omitted to be done before such supersession, the President, with the consent of the Government of West Bengal, hereby entrusts to :—

(a) the Deputy Commissioner of Police, Special Branch Calcutta, within the town of Calcutta as defined in the Calcutta Police Act 1866, and the suburbs of Calcutta as defined by notification under section 1 of the Calcutta Suburban Police Act, 1866;

(b) the District Superintendents of Police, In-charge of D.I.B., in West Bengal, within their respective jurisdictions;

(c) the Additional Superintendent of Police in charge of D.I. B's North 24-Parganas district within his jurisdiction; and

(d) the Additional Superintendent of Police in charge of D. I. B's, South 24-Parganas district within his jurisdiction;

the functions of the Central Government in making orders of the nature specified in clauses (a), (b), (c), (cc), (e) and (f) of sub-section (2) of section 3 of the Foreigners Act, 1946 (31 of 1946), subject to the following conditions, namely :—

(a) that the functions so entrusted shall be exercised in respect of nationals of Bangladesh;

(b) that in the exercise of such functions the said officers shall comply with such general or special direc-

tions as the Government of West Bengal or the Central Government may from time to time issue; and

(c) that notwithstanding this entrustment, the Central Government may itself exercise any of the said functions should it deem fit to do so in any case.

[No. 14011/5/88-F. III]

INDIRA MISRA, Jt. Secy.

वित्त मंत्रालय

(राजस्व विभाग)

आदेश

नई दिल्ली, 18 जनवरी, 1989

स्टाम्प

का. घा. 362.—भारतीय स्टाम्प अधिनियम, 1899 (1899 का 2) की धारा 9 की उपधारा (1) के खंड (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार एतद्वारा हाउसिंग डिवेलपमेंट फाइनेंस कॉर्पोरेशन लिमिटेड, बम्बई को मात्र वस मात्र रुपये के उम समेकित स्टाम्प शुल्क की प्रदायगी करने की अनुमति देती है, जो उक्त कॉर्पोरेशन द्वारा जारी किए जाने वाले मात्र वस करोड़ रु. के अंकित मूल्य के प्रामाण्यी नोटों के स्वरूप में एन. डी. एफ. सी. 12 5% नवें बंधपत्र निर्गम पर स्टाम्प शुल्क के कारण प्रभाव्य है।

[सं. 4/89/स्टाम्प-फा. सं. 33/89/88-बि. क.]

बी. आर. मेहमी, अवर सचिव

MINISTRY OF FINANCE

(Department of Revenue)

ORDER

New Delhi, the 18th January, 1989

STAMPS

S.O. 362.—In exercise of the powers conferred by clause (h) of sub-section (1) of section 9 of the Indian Stamp Act, 1899, (2 of 1899), the Central Government hereby permits the Housing Development Finance Corporation Limited, Bombay to pay consolidated stamp duty of rupees ten lakh only, chargeable on account of the stamp duty on HDEC 12.5 per cent Ninth Bonds Issue in the form of promissory notes of the face value of rupees ten crores only to be issued, by the said Corporation.

[No. 4/89/Stamp-F. No. 33/89/88-ST]

B. R. MEHMI, Under Secy.

नई दिल्ली, 19 जनवरी, 1989

का. घा. 363.—सरकारी स्थान (अप्राधिकृत अधिभोगियों की बेवखली) अधिनियम, 1971 (1971 का 40) की धारा 3 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार एतद्वारा नीचे दी गई तालिका के कालम (2) में उल्लिखित अधिकारी को, जो कि सरकार के एक राजपत्रित अधिकारी हैं, उक्त अधिनियम के प्रयोजनार्थ सम्पदा अधिकारी नियुक्त करती है तथा ऐसा अधिकारी उक्त तालिका के कालम (3) में उल्लिखित प्रविष्टि में विनिर्दिष्ट सरकारी परिसरों के संबंध में अपने क्षेत्राधिकार के अन्वयान रहते हुए उक्त अधिनियम के द्वारा प्रदत्त उसके

अध्याधीन सम्पदा अधिकारियों को प्रदत्त शक्तियों का प्रयोग करते तथा उन्हें सौंपी गई दायित्वों को निष्पादित करते :—

तालिका

क्र. अधिकारी का पदनाम स.	सरकारी परिसरों की श्रेणी तथा क्षेत्राधिकार की स्थानीय सीमा
1	2
1. प्रधान समाहर्ता, सीमा-शुल्क तथा केन्द्रीय उत्पादन-शुल्क, नई दिल्ली	दिल्ली संघ राज्य क्षेत्र की सीमा के भीतर पश्चिम गांव में स्थित तथा केन्द्रीय उत्पादन-शुल्क तथा सीमाशुल्क बोर्ड, राजस्व विभाग, वित्त मंत्रालय, भारत सरकार नई दिल्ली के प्रशासनिक नियंत्रणाधीन एस-II/518, 519, 530, 531, 536, 537 तथा एस-III/484, 485, 490 तथा 491 संख्या वाले इस फ्लैट, जो कि सरकारी परिसर हैं।

[क्र. सं. 213/20/88-प्रशा. VIII (ई. सी.)
विजय सिंह, अध्वर सचिव

New Delhi, the 19th January, 1989

S.O. 363.—In exercise of the powers conferred by section 3 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (40 of 1971), the Central Government hereby appoints the officer mentioned in column (2) of the Table below, being a gazetted officer of the Government to be the estate officer for the purposes of the said Act, and such officer shall exercise the powers conferred and perform the duties imposed, on estate officers by or under the said Act, within the limit of his jurisdiction in respect of public premises specified in the corresponding entry in column (3) of the said Table :—

TABLE

S. Designation of Officer No.	Category of the public premises and local limits jurisdiction.
1	2
1. Principal Collector of Customs and Central Excise, New Delhi.	Public premises being ten flats bearing numbers S-II/518, 519, 530, 531, 536, 537 and S III/484, 485, 490 and 491 located in Asiad Village, situated within the limits of the Union Territory of Delhi and under the administrative control of the Central Board of Excise and Customs, Department of Revenue, Ministry of Finance, Govt. of India, New Delhi.

[F.No. 213/20/88-Ad. VIII(EC)]
VIJAY SINGH, Under Secy.

(आर्थिक कार्य विभाग)

(बैंकिंग प्रभाग)

नई दिल्ली, 23 जनवरी, 1989

क्र. प्र. 364.—औद्योगिक वित्त निगम अधिनियम, 1948 (1948 का 15) की धारा 5 द्वारा प्रदत्त शक्तियों का प्रयोग करत हुए, केन्द्रीय सरकार एतद्वारा भारतीय औद्योगिक वित्त निगम द्वारा जारी की जाने वाली बारह करोड़ पचास लाख रुपये की अतिरिक्त शेयर पूंजी पर केन्द्रीय सरकार द्वारा गारंटीगुदा वार्षिक लाभांश की न्यूनतम दर 6 प्रतिशत निर्धारित करती है।

[एफ. संख्या 2(35)/आई. एफ. 1/88]
एम. सी. सत्यवादी, संयुक्त सचिव

(Department of Economic Affairs).

(Banking Division)

New Delhi, the 23rd January, 1989

S.O. 364.—In exercise of the powers conferred by section 5 of the Industrial Finance Corporation Act, 1948 (15 of 1948), the Central Government hereby fixes the minimum rate of annual dividend guaranteed by the Central Government on the additional share capital of rupees twelve crores and fifty lakhs to be issued by the Industrial Finance Corporation of India, at 6 per cent.

[F. No. 2(35)IF1/88]

M. C. SATYAWADI, Jr. Secy.

नई दिल्ली, 16 फरवरी, 1989

क्र.प्र. 365.—केन्द्रीय सरकार औद्योगिक वित्त निगम अधिनियम, 1948 (1948 का 15) की धारा 21 की उप-धारा (2) के अनुसरण में भारतीय औद्योगिक वित्त निगम के निदेशक बोर्ड की सिफारिश पर उक्त निगम द्वारा 28 फरवरी, 1989 को जारी किए जाने वाले और 28 फरवरी, 2009 को परिपक्व होने वाले बांडों पर बेय ब्याज की दर एतद्वारा 11.5% (ग्यारह प्रतिशत) वार्षिक निर्धारित करती है।

[क्र. सं. 6(11)-आई.एफ. 1/88]

एच. एस. कुमार, उप सचिव

New Delhi, the 16th February, 1989

S.O. 365.—In pursuance of sub-section 2 of Section 21 of the Industrial Finance Corporation Act, 1948 (15 of 1948), the Central Government, on the recommendation of the Board of Directors of the Industrial Finance Corporation of India, hereby fixes 11.5 per cent (Eleven and half per cent) per annum as the rate of interest payable on the bonds to be issued by the said Corporation on 28th February, 1989 and maturing on 28th February, 2009.

[F. No. 6(11)/I.F.1/88]

H. S. KUMAR, Dy. Secy.

केन्द्रीय उत्पाद शुल्क एवं सीमा शुल्क समाहर्तालय

अधिसूचना सं० 17/1989

इन्दौर, 17 जनवरी, 1989

क्र. प्र. 366.—समाहर्तालय केन्द्रीय उत्पाद शुल्क, इन्दौर के श्री एस. के. लोहे, अधीक्षक समूह "ख" निर्देशित आयु प्राप्त करने पर दिनांक 31-12-88 को अपराह्न में शासकीय सेवा से निवृत्त हो गए।

[प. सं. 11(3) 8-सोप/87/24]

बा. क. अग्रवाल, समाहर्ता

CENTRAL EXCISE COLLECTORATE

NOTIFICATION NO. 12/1989

Indore, the 17th January, 1989

S.O. 366.—Shri S. K. Londhe, Superintendent, Central Excise, Group 'B' of Indore Collectorate having attained the age of superannuation retired from Government service on 31-12-1988, A.N.

[C. No. II(3)8-Con.[89/239]

B. K. AGARWAL, Collector

संयुक्त मुख्य नियंत्रक आयात-निर्यात का कार्यालय

(केन्द्रीय लाइसेंसिंग क्षेत्र)

आयात (नियंत्रण) आदेश 1955 के खण्ड-9 के अन्तर्गत आदेश

नई दिल्ली, 10 जनवरी, 1989

का. आ. 367.—मैसर्स फैंसी इन्टरनेशनल, ए-223, ओखला इन्डस्ट्रियल एरिया, फेज-1, नई दिल्ली को 29-11-88 को आयात (नियंत्रण) आदेश, 1955 की धारा 9 के अन्तर्गत एक नोटिस जारी किया गया था कि क्यों न 40,000 रुपये का लाइसेंस सं. पी/एफ/1487440 दिनांक 22-9-88 इस आधार पर निरस्त कर दिया जाए कि यथासंशोधित आयात (नियंत्रण) आदेश 1955, की धारा-9 के उपखण्ड (ए) की शर्त तथा नीति पुस्तक 1988-91 के पैरा 118(1) की शर्तों के आधार पर वे इसके पात्र नहीं थे।

2. लाइसेंसधारी या बैंक अथवा अन्य व्यक्ति जिसके कब्जे में लाइसेंस है को उक्त नोटिस के प्रसीत निदेश दिया गया था कि उक्त लाइसेंस के मद्दे कोई मास आयात न करें या उसे कहीं भी किसी प्रकार से प्रचालन में न लायें या उसके मद्दे कोई भी वादा न करें और तत्काल ही उस लाइसेंस को अधोहस्ताक्षरी को वापिस कर दें।

3. उपरोक्त कारण बताओ नोटिस के जवाब में मैसर्स फैंसी इन्टरनेशनल, ए-223, ओखला इन्डस्ट्रियल एरिया, फेज-1, नई दिल्ली ने अपने पत्र दि. 12-12-88 द्वारा एक विस्तृत स्पष्टीकरण प्रस्तुत किया था और अधोहस्ताक्षरी को व्यक्तिगत मुनबार्द के लिए भी अनुरोध किया था जिसकी उसको या उसके प्रतिनिधि को अनुमति दे दी गई थी। मैसर्स फैंसी इन्टरनेशनल, नई दिल्ली ने अपने उक्त जवाब में कहा कि वे प्रक्रिया पुस्तक 1988-91 के पैरा 118(3) की शर्तों के अनुसार निर्यात सवन के होने के होते उक्त लाइसेंस के पात्र हैं।

4. मैंने लाइसेंस धारी के स्पष्टीकरण तथा उनके दिनांक 12-12-88 के जवाब में दी गई धलीलों को ध्यानपूर्वक देखा है तथा मैं इस निर्णय पर पहुँचा हूँ कि यह लाइसेंस प्रमजाने में जारी किया गया था तथा इसे निरस्त किया जाना उचित है।

5. पिछले वैरापाक में जो कुछ कहा गया है उसे ध्यान में रखते हुए अधोहस्ताक्षरी सन्तुष्ट है कि यह किस आयात व्यापार नियंत्रण आदेश की धारा-9 के अन्तर्गत आता है अतः उक्त लाइसेंस रद्द किया जाना चाहिए अथवा निषप्रभावी किया जाना चाहिए। इसलिए आयात (नियंत्रण) आदेश, 1955 की धारा-9 के उप-खण्ड-(ए) के अन्तर्गत मुझे प्रदत्त अधिकारों का प्रयोग करते हुए मैं एतद्वारा मैसर्स फैंसी इन्टरनेशनल, ए-223, ओखला इन्डस्ट्रियल एरिया, फेज-1, नई दिल्ली द्वारा प्राप्त 40,000 रु. के लाइसेंस सं. पी/एफ/1487440 दिनांक 22-9-88 को निरस्त करता हूँ।

[का. सं. अधिका/54/ए एम/89/एयू-2/सी एल ए/287]

एस. आर. जोहर, उप मुख्य नियंत्रक आयात-निर्यात

इसे संयुक्त मुख्य नियंत्रक आयात व निर्यात

OFFICE OF THE JOINT CHIEF CONTROLLER OF IMPORTS & EXPORTS

(Central Licensing Area)

ORDER UNDER CLAUSE 9 OF IMPORTS (CONTROL) ORDER 1955

New Delhi, the 10th January, 1989

S.O. 367.—Whereas a notice was issued on 29-11-88 under clause 9 of the Imports (Control) Order, 1955 to M/s. Fancy International, A-223, Okhla Indl. Area, Phase-I, New Delhi as to why the licence No. P/F/1487440 dt. 22-9-88 for Rs. 40,000/- may be cancelled on the ground that they were not eligible for the same in terms of para 118(1) of AM. 88-91 Policy Book, in terms of clause 9 sub-clause (a) of the Imports (Control) Order, 1955 as amended.

2. The licence or the Bank or any other person having possession of the licence was also directed under the said notice not to import any goods against the licence or operate upon the said licence in any manner or to make any commitment against the same and to return the licence immediately to the undersigned.

3. In response to the aforesaid show cause Notice M/s. Fancy International, A-223, Okhla Indl. Area, Phase-I, New Delhi had by their letter dt. 12-12-88 furnished a detailed explanation and has also asked for personal hearing with the undersigned which was allowed to them or to their representation. In their said reply the firm M/s. Fancy International, New Delhi have stated that they are eligible for the said licence being an export house in terms of para 118(3) of the Policy Book for AM 88-91.

4. I have carefully gone through the explanation of the licensee and arguments advanced in their reply dt. 12-12-88 and have come to the conclusion that the said licence was inadvertently issued and merits cancellation.

5. Having regard to what has been stated in the preceding paragraph, the undersigned is satisfied that the case appropriately falls under Clause 9 to the ITC Order and as such licence in question should be cancelled or otherwise rendered in-effective. Therefore, I in exercise of the powers vested in me under Clause 9 sub-clause (a) of the Imports (Control) Order, 1955 hereby cancel the licence No. P/F/1487440 dt. 22-9-88 for Rs. 40,000/- obtained by M/s. Fancy International, A-223, Okhla Indl. Area, Phase-I, New Delhi.

[File No. Adhoc/54/AM. 89/AU. II/CLA/287]

S. R. JOHAR, Dy. Chief Controller of Imports & Exports

for Jt. Chief Controller of Imports & Exports

संचार मंत्रालय

(दूरसंचार विभाग)

नई दिल्ली, 18 जनवरी, 1989

का.पा. 368.—स्थायी आदेश संख्या 827, दिनांक 8 मार्च, 1980 द्वारा लागू किया गया भारतीय तार नियम 1951 के नियम 434 के खंड 111 के पैरा 1(क) अनुसार, महाविदेशक, दूरसंचार विभाग ने मध्यप्रदेश दूरसंचार सफिल के दिग्गज, बागरी, तल्ला और मण्डू टेलिफोन केन्द्रों; मध्यप्रदेश दूरसंचार सफिल थमलवल्ला टेलिफोन केन्द्र; गुजरात दूर संचार सफिल के प्रांतिक टेलिफोन केन्द्र; बीहार दूरसंचार सफिल के कस्बा टेलिफोन केन्द्र; तथा बर्धमान महानगर टेलिफोन निगम लिमिटेड के उरण टेलिफोन केन्द्र में दिनांक 01-02-1989 में प्रमाणित दर प्रणाली लागू करने का निश्चय किया है।

[संका 5-1/89-पी.एच. बी.]

जी. आर. कारड़ा, सहायक महाविदेशक (पी.एच.बी.)

MINISTRY OF COMMUNICATIONS

(Department of Telecommunications)

New Delhi, the 18th January, 1989

S.O. 368.—In pursuance of para 1(a) of Section III of Rule 434 of Indian Telegraph Rules, 1951, as introduced by S.O. No. 627 dated 8th March, 1960, the Director General Department of Telecommunications, hereby specifies 1-2-1989 as the date on which the Measured Rate System will be introduced in Digthan, Bagdi, Nalcha and Mandu Telephone Exchanges under Madhya Pradesh Telecom. Circle, Amadalavalasa Telephone Exchange under Andhra Pradesh Telecom. Circle, Prantij Telephone Exchange under Gujarat Telecom. Circle, Kasba Telephone Exchange under Bihar Telecom. Circle, and Uran Telephone Exchange under Bombay Mahanagar Telephone Nigam Ltd.

[No. 5-1/89-PHB]

P. R. KARRA, Asstt. Director General (PHB)

धर्म मंत्रालय

नई दिल्ली, 17 जनवरी, 1989

का.प्र. 369 :—केन्द्रीय सरकार, कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 91-क के साथ पठित धारा 88 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उक्त अधिनियम प्रवर्तन से भारत सरकार के उद्यम सैमर्स नेशनल टेक्स्टाइल कारपोरेशन (तमिलनाडू और पांडिचेरी) लि., कोयंबटूर के प्रधान कार्यालय में नियुक्त नियमित कर्मचारियों को 1-10-1985 से 31-3-1986 तक जिसमें यह बिना भी सम्मिलित है की ओर अवधि के लिए छूट प्रदान करती है।

2. पूर्वोक्त छूट की शर्तें निम्नलिखित हैं, अर्थात् :—

- (1) पूर्वोक्त कारखाना, जिसमें कर्मचारी नियोजित है, एक रजिस्टर रखेगा, जिसमें छूट प्राप्त कर्मचारियों के नाम और पदाभिधान दिखाए जाएंगे;
- (2) इस छूट के होते हुए भी, कर्मचारी उक्त अधिनियम के अधीन ऐसी प्रसुविधाएं प्राप्त करने रहेंगे, जिनको पाने के लिए वे इस अधिसूचना द्वारा दी गई छूट के प्रभुत्व होने की तारीख से पूर्व सम्मत अभिवायों के आधार पर हकदार हो जाएं;
- (3) छूट प्राप्त अवधि के लिए यदि कोई अभिवाय पहले ही किए जा चुके हों तो वे वापस नहीं किए जाएंगे;
- (4) उक्त कारखाने का नियोजक, उस अवधि की बाबत जिसके दौरान उस कारखाने पर उक्त अधिनियम प्रवर्तमान था (जिसे इसमें इसके पश्चात् "उक्त अवधि" कहा गया है), ऐसी विवरणियां ऐसे प्रारूप में और ऐसी विधिष्ठियों सहित देगा जो कर्मचारी राज्य बीमा (साधारण) विनियम, 1950 के अधीन उसे उक्त अवधि की बाबत देनी थी;
- (5) निगम द्वारा उक्त अधिनियम की धारा 45 की उप-धारा (1) के अधीन नियुक्त किया गया कोई निरीक्षक, या निगम का इस निमित्त प्राधिकृत कोई अन्य पदधारी :—
 - (3) धारा 44 की उप-धारा (1) के अधीन, उक्त अवधि की बाबत दी गई किसी विवरणी की विधिष्ठियों को स्थापित करने के प्रयोजनार्थ
 - (2) यह अभिनिश्चित करने के प्रयोजनार्थ कि कर्मचारी राज्य बीमा (साधारण) विनियम, 1950 द्वारा यथा

अपेक्षित रजिस्टर और अभिलेख उक्त अवधि के लिए रखे गये थे या नहीं : या

- (3) यह अभिनिश्चित करने के प्रयोजनार्थ कि कर्मचारी, नियोजक द्वारा दिये गए उन फायदों को, जिसके प्रतिकूल स्वल्प इस अधिसूचना के अधीन छूट दी जा रही है, नकद में और गस्तु रूप में पाने का हकदार बना हुआ है या नहीं : या
- (4) यह अभिनिश्चित करने के प्रयोजनार्थ कि उस अवधि के दौरान, जब उक्त कारखाने के संबंध में अधिनियम के उपबन्ध प्रवृत्त थे, ऐसे किन्हीं उपबन्धों का अनुपालन किया गया था या नहीं ;

निम्नलिखित कार्य करने के लिए सज्जत होगा :—

- (क) प्रधान या अध्यक्षित नियोजक से अपेक्षा करने की वह उसे ऐसी जानकारी दे जिसे उपरोक्त निरीक्षक या अन्य पदधारी आवश्यक समझता है ;
- (ख) ऐसे प्रधान या अध्यक्षित नियोजक के अधिभागाधीन किसी कारखाने स्थापन, कार्यालय या अन्य परिसर में किसी भी उचित समय पर प्रवेश करना और उसके प्रभारी से यह अपेक्षा करना कि वह व्यक्तियों के नियोजन और सज्जरी के संदाय से संबंधित ऐसे लेखा, वहीणों और अन्य दस्तावेज, ऐसे निरीक्षक या अन्य पदधारी के समक्ष प्रस्तुत करे और उनकी परीक्षा करने दे, या उन्हें ऐसी जानकारी दे, जिसे वे आवश्यक समझते हैं; या
- (ग) प्रधान या अध्यक्षित नियोजक की, उसके अधिकर्ता या सेवक की, या ऐसे किसी व्यक्ति की जो ऐसे कारखाने, स्थापन, कार्यालय या अन्य परिसर में पाया जाए, या ऐसे किसी व्यक्ति की जिसके बारे में उक्त निरीक्षक या अन्य पदधारी के पास यह विश्वास करने का युक्तिपूर्वक कारण है कि वह कर्मचारी है, परीक्षा करना; या
- (घ) ऐसे कारखाने, स्थापन, कार्यालय या अन्य परिसर में रखे गए किसी रजिस्टर, लेखाबही या अन्य दस्तावेज की तकत तैयार करना या उससे उद्धरण लेना ।

[संख्या एम-38014/3/89-एम.एस-1]

(संश्लेषण ज्ञापन)

इस मामले में छूट को भूतलक्षी प्रभाव देना आवश्यक हो गया है क्योंकि छूट का आवेदन पत्र देरी से प्राप्त हुआ था। किन्तु वह प्रमाणित किया जाता है कि छूट को भूतलक्षी प्रभाव देने से किसी भी व्यक्ति के हित पर प्रतिकूल प्रभाव नहीं पड़ेगा।

MINISTRY OF LABOUR

New Delhi, the 17th January, 1989

S.O. 369.—In exercise of the power conferred by section 88 read with section 91A of the Employees' State Insurance Act, 1948 (34 of 1948), the Central Government hereby exempts the regular employees of the Head Office of M/s. National Textile Corporation (Tamil Nadu & Pondichery) Limited, Coimbatore a Govt. of India Enterprise from the operation of the said Act for a period with effect from 1st October, 1985 upto and inclusive of the 31st March, 1986.

The above exemption is subject to the following conditions, namely :—

- (1) The aforesaid factory wherein the employees are employed shall maintain a register showing the names and designations of the exempted employees;

(2) Notwithstanding this exemption, the employees shall continue to receive such benefits under the said Act to which they might have become entitled to on the basis of the contributions paid prior to the date from which exemption granted by this notification operates;

(3) The contributions for the exempted period, if already paid, shall not be refunded;

(4) The employer of the said factory shall submit in respect of the period during which that factory was subject to the operation of the said Act (hereinafter referred to as the said period), such returns in form and containing such particulars as were due from it in respect of the said period under the Employees' State Insurance (General) Regulations, 1950;

(5) Any inspector appointed by the Corporation under sub-section (1) of section 45 of the said Act or other official of the Corporation authorised in this behalf shall, for the purpose of —

- (i) verifying the particulars contained in any return submitted under sub-section (1) of section 44 for the said period; or
- (ii) ascertaining whether registers and records were maintained as required by the Employees' State Insurance (General) Regulations, 1950 for the said period; or
- (iii) ascertaining whether the employees continue to be entitled to benefits provided by the employer in cash and kind begin benefits in consideration of which exemption is being granted under this notification; or
- (iv) ascertaining whether any of the provisions of the Act had been complied with during the period when such provisions were in force in relation to the said factory be empowered to :—
 - (a) require the principal or immediate employer to furnish to him such information as he may consider necessary; or
 - (b) enter any factory, establishment, office or other premises occupied by such principal or immediate employer at any reasonable time and require any person found in charge thereof to produce to such inspector or other official and allow him to examine such accounts, books and other documents relating to the employment of persons and payment of wages or to furnish to him such information as he may consider necessary; or
 - (c) examine the principal or immediate employer, his agent or servant, or any person found in such factory, establishment, office or other premises or any person whom the said inspector or other official has reasonable cause to believe to have been an employee; or
 - (d) make copies of or take extracts from, any register, account book or other document maintained in such factory, establishment, office or other premises.

[File No. S-38014/2/89-SS.1]

EXPLANATORY MEMORANDUM

It has become necessary to give retrospective effect to the exemption in this case as the application for exemption was received late. However, it is certified that the grant of exemption with retrospective effect will not affect the interest of anybody adversely.

नई दिल्ली, 18 जनवरी, 1989

का.पा. 370 :—केन्द्रीय सरकार, कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 91-क के साथ पठित धारा 88

द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उक्त अधिनियम प्रवर्तन से मसम भारत हेवी इलेक्ट्रिकल्स लि., के सूचीबद्ध सभी एकक में नियुक्त नियमित कर्मचारियों को 1-10-1988 से 30-9-1991 तक जिसमें यह बिनार्क भी सम्मिलित है की ओर अवधि के लिए छूट प्रदान करती है।

2. पूर्वोक्त छूट की शर्तें निम्नलिखित हैं, अर्थात् :—

- (1) पूर्वोक्त कारखाना, जिसमें कर्मचारी नियोजित है, एक रजिस्टर रखेगा, जिसमें छूट प्राप्त कर्मचारियों के नाम और पदाभिधान दिखाए जाएंगे;
- (2) इस छूट के होते हुए भी, कर्मचारी उक्त अधिनियम के अधीन ऐसी प्रसुविधाएं प्राप्त करते रहेंगे, जिनको पाने के लिए वे इस अधिसूचना द्वारा दी गई छूट के प्रवृत्त होने की तारीख से पूर्व सन्दर्भ अधिदायों के आधार पर हकदार हो जाते;
- (3) छूट प्राप्त अवधि के लिए यदि कोई अधिदाय पहले ही किए जा चुके हों तो वे वापस नहीं किए जाएंगे;
- (4) उक्त कारखाने का नियोजक, उस अवधि की बाबत जिसके दौरान उस कारखाने पर उक्त अधिनियम प्रवर्तमान था (जिसे इसमें इसके पश्चात् "उक्त अवधि" कहा गया है), ऐसी विवरणियां ऐसे प्रारूप में और ऐसी विधिष्टियों सहित देगा जो कर्मचारी राज्य बीमा (साधारण) विनियम, 1950 के अधीन उसे उक्त अवधि की बाबत देनी थी;
- (5) निगम द्वारा उक्त अधिनियम की धारा 45 की उप-धारा (1) के अधीन नियुक्त किया गया कोई निरीक्षक, या निगम का इस निमित्त प्राधिकृत कोई अन्य पदधारी :—
 - (1) धारा 44 की उप-धारा (1) के अधीन, उक्त अवधि की बाबत दी गई किसी विवरणी की विधिष्टियों को स्थापित करने के प्रयोजनार्थ
 - (2) यह अभिविधित करने के प्रयोजनार्थ कि कर्मचारी राज्य बीमा (साधारण) विनियम, 1966 द्वारा यथा अपेक्षित रजिस्टर और अभिलेख उक्त अवधि के लिए रखे गये थे या नहीं; या
 - (3) यह अभिविधित करने के प्रयोजनार्थ कि कर्मचारी, नियोजक द्वारा दिये गए उन फायदों को, जिसके प्रति फल स्वरूप इस अधिसूचना के अधीन छूट दी जा रही है, नफ़ में और वस्तु रूप में पाने का हकदार बना हुआ है या नहीं; या
 - (4) यह अभिविधित करने के प्रयोजनार्थ कि उस अवधि के दौरान, जब उक्त कारखाने के संबंध में अधिनियम के उप-बंध प्रवृत्त थे, ऐसे किन्हीं उपबन्धों का अनुपालन किया गया था या नहीं;

निम्नलिखित कार्य करने के लिए सशक्त होगा :—

- (क) प्रधान या व्यवस्थापक नियोजक से अपेक्षा करते कि वह उसे ऐसी जानकारी दे जिसे उपरोक्त निरीक्षक या अन्य पदधारी आवश्यक समझता है;
- (ख) ऐसे प्रधान या व्यवस्थापक नियोजक के अधिसूचनाधीन किसी कारखाने, स्थापन, कार्यालय या अन्य परिसर में किसी भी उचित समय पर प्रवेश करना और उसके प्रभारी से यह अपेक्षा करना कि वह व्यक्तियों के नियोजन और मजहूरी के संदाय से संबंधित ऐसे लेखा, बहियां और अन्य दस्तावेज, ऐसे निरीक्षक या अन्य पदधारी के समक्ष प्रस्तुत करे और उनकी

परीक्षा करने हे, या उन्हें ऐसी जानकारी दे, जिसे वे आवश्यक समझते हैं; या

- (ग) प्रधान या अध्यक्षित नियोजक की, उसके अधिकर्ता या सेवक की, या ऐसे किसी व्यक्ति की जो ऐसे कारखाने, स्थापन, कार्यालय या अन्य परिसर में पाया जाए, या ऐसे किसी व्यक्ति की जिसके बारे में उक्त निरीक्षक या अन्य पदधारी के पास यह विश्वास करने का युक्तियुक्त कारण है कि वह कर्मचारी है, परीक्षा करना; या
- (घ) ऐसे कारखाने, स्थापन, कार्यालय या अन्य परिसर में रखे गए किसी रजिस्टर, सेखाबही या अन्य दस्तावेज की नकल तैयार करना या उससे उद्धरण भना।

अनुसूची

क्रमांक हवाई का नाम

1. बिक्री बाजार, प्रभाग, नई दिल्ली
2. ट्रांसफॉर्मर प्लांट, झंसी
3. स्टीम टरबाइन मनुष्यकचरिंग यूनिट, हरद्वार
4. हाई-प्रेसर बॉयलर प्लांट, तिरुची

[संख्या एस-38014/16/88-एस.एस-1]

(स्पष्टीकरण ज्ञापन)

इस मामले में छूट को भूतलसी प्रभाव देना आवश्यक हो गया है क्योंकि छूट के आवेदन पर कार्यवाही करने में समय लगा था किन्तु यह प्रमाणित किया जाता है कि छूट को भूतलसी प्रभाव देने से किसी भी व्यक्ति के हित पर प्रतिकूल प्रभाव नहीं पड़ेगा।

New Delhi, the 18th January, 1989

S.O. 370.—In exercise of the power conferred by section 88 read with section 91-A of the Employees' State Insurance Act, 1948 (34 of 1948), the Central Government hereby exempts the regular employees of the Units of M/s. Bharat Heavy Electricals Ltd. specified in the Schedule Annexed hereto from the operation of the said Act for a period with effect from 1st October, 1988 upto and inclusive of the 30th September, 1991.

The above exemption is subject to the following conditions, namely :—

(1) The aforesaid factory wherein the employees are employed shall maintain a register showing the names and designations of the exempted employees ;

(2) Notwithstanding this exemption, the employees shall continue to receive such benefits under the said Act to which they might have become entitled to on the basis of the contributions paid prior to the date from which exemption granted by this notification operates ;

(3) The contributions for the exempted period, if already paid, shall not be refunded ;

(4) The employer of the said factory shall submit in respect of the period during which that factory was subject to the operation of the said Act (hereinafter referred to as the said period), such returns in form and containing such particulars as were due from it in respect of the said period under the Employees' State Insurance (General) Regulations, 1950 ;

(5) Any Inspector appointed by the Corporation under sub-section (1) of section 45 of the said Act, or other official of the Corporation authorised in this behalf shall, for the purpose of—

- (i) verifying the particulars contained in any return submitted under sub-section (1) of section 44 for the said period; or

(ii) ascertaining whether registers and records were maintained as required by the Employees' State Insurance (General) Regulations, 1950 for the said period ; or

(iii) ascertaining whether the employees continue to be entitled to benefits provided by the employer in cash and kind being benefits in consideration of which exemption is being granted under this notification ; or

(iv) ascertaining whether any of the provisions of the Act had been complied with during the period when such provisions were in force in relation to the said factory be empowered to :—

(a) require the principal or immediate employer to furnish to him such information as he may consider necessary ; or

(b) enter any factory, establishment, office or other premises occupied by such principal or immediate employer at any reasonable time and require any person found incharge thereof to produce to such inspector or other official and allow him to examine such accounts, books and other documents relating to the employment of persons and payment of wages or to furnish to him such information as he may consider necessary ; or

(c) examine the principal or immediate employer, his agent or servant, or any person found in such factory, establishment office or other premises or any person whom the said inspector or other official has reasonable cause to believe to have been an employee ; or

(d) make copies of or take extracts from any register, account book or other document maintained in such factory, establishment, office or other premises.

SCHEDULE

Sl. No. Name of the Unit

1. Marketing Sales Division New Delhi.
2. Transformer Plant, Jhansi ;
3. Steam Turbine Manufacturing Unit, Hardwar ;
4. High-Pressure Boiler Plant, Tiruchy.

[File No. S-38014/16/88-SS-I]

EXPLANATORY MEMORANDUM

It has become necessary to give retrospective effect to the exemption in this case as the processing of application for exemption took time. However, it is certified that the grant of exemption with retrospective effect will no effect the interest of anybody adversely.

नई दिल्ली, 19 जनवरी, 1989

का. भा. 371:—उ.प्र. राज्य सरकार ने कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 4 के खण्ड (ब) के अनुसरण में श्री ब्रजेश कुमार के स्थान पर श्री मोहित्वर सिंह, सचिव, श्रम विभाग, उत्तर प्रदेश सरकार को कर्मचारी राज्य बीमा निगम में उस राज्य का प्रतिनिधित्व करने के लिए नामनिर्दिष्ट किया है;

अतः सब क्षेत्रीय सरकार, कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 4 के अनुसरण में, भारत सरकार के श्रम मंत्रालय की अधिसूचना संख्या का.भा. 545(अ) दिनांक 25 जुलाई, 1985 में निम्नलिखित संशोधन करती है, अर्थात्:—

उक्त अधिसूचना में, "(राज्य सरकार द्वारा धारा 4 के खण्ड (ब) के अधीन नामनिर्दिष्ट)" शीर्षक के नीचे मू. 26 के सामने की प्रविष्टि

के स्थान पर निम्नलिखित प्रविष्टि रखी जाएगी, अर्थात्:—

श्री मोहिनंदर सिंह,
सचिव, उत्तर प्रदेश सरकार
श्रम विभाग
लखनऊ।

[संख्या यू-16012/15/87-एम.एम.-1]

ए.के. गट्टरार्ड, अवसर सचिव

New Delhi, the 19th January, 1989

S.O. 371.—Whereas the State Government of Uttar Pradesh has, in pursuance of clause (d) of section 4 of the Employees' State Insurance Act, 1948 (34 of 1948) nominated Shri Mohinder Singh, Secretary, Labour Department, Government of U.P. to represent that State on the Employees' State Insurance Corporation, in place of Shri Brijesh Kumar ;

Now, therefore, in pursuance of section 4 of the Employees' State Insurance Act, 1948 (34 of 1948), the Central Government hereby makes the following amendment in the notification of the Government of India in the Ministry of Labour S.O. No. 545(E), dated the 25th July, 1985, namely :—

In the said notification under the heading "(Nominated by the State Government under clause (d) of section 4)" for the entry against Serial Number 26, the following entry shall be substituted, namely :—

Shri Mohinder Singh,
Secretary to the Government of Uttar Pradesh,
Labour Department,
Lucknow.

[No. U-16012/15/87-SS.I]
A. K. BHATTARAI, Under Secy.

नई दिल्ली, 20 जनवरी, 1989

का.आ. 372:—केन्द्रीय सरकार, जूना पत्थर और डोलोमाइट खान श्रम कल्याण निधि अधिनियम, 1972 (1972 का 62) की धारा 10 के अनुसरण में, वित्तीय वर्ष 1987-88 के दौरान उक्त अधिनियम के अधीन वित्त पोषित अपने क्लायकलाओं का विवरण देते हुए उस वर्ष के लेखा विवरण के साथ निम्नलिखित रिपोर्ट प्रकाशित करती है:—
सामान्य :

जूना पत्थर और डोलोमाइट खान श्रम कल्याण निधि को जूना पत्थर और डोलोमाइट खान श्रम कल्याण निधि अधिनियम, 1972 (1972 का 62) के अधीन गठित किया गया था, जिसमें जूना पत्थर और डोलोमाइट खान में नियोजित कर्मचारियों के कल्याण की प्रगति करने के लिए किसी खान में उत्पादित उतने जूना पत्थर और डोलोमाइट पर जितना :

- (1) किसी कारखाने के अधिष्ठत को विक्रय किया जाता है या प्रत्येक व्ययन किया जाता है; या
- (2) ऐसी खान के स्वामी द्वारा सीमेंट, लोहा, इस्पात, खाद्य, रिफ़ैक्टरीज, लोह प्रत्यक्ष वेल्टाइजेशन या ऐसी अन्य वस्तुओं या सामानों के बर्ग, जैसा कि केन्द्रीय सरकार समय समय पर सरकारी राजपत्र में अधिसूचना द्वारा निर्दिष्ट करती है, के निर्माण में किसी प्रयोजन के लिए उपयोग में लाया जाता है,

एक रुपया प्रति मीट्रिक टन से अधिक वर से उत्पादन शुल्क के उद्ग्रहण और संग्रहण की व्यवस्था की गई है। इस समय उद्ग्रहण की वार्षिक दर बीस पैसे प्रति मीट्रिक टन है। ऊपर के आगम मुख्यतः लोक स्वास्थ्य और स्वच्छता में सुधार, चिकित्सा सुविधाओं की व्यवस्था, जल आपूर्ति की व्यवस्था और उसमें सुधार, शैक्षिक सुविधाएँ, आवास

पोषण और मनोरंजन कार्यक्रमों, आदि के लिए लागत भरा करने के लिए उपयोग में लाए जाते हैं।

2. प्रशासनिक सुविधाओं के लिए, सभी राज्यों और संघ शासित क्षेत्रों को नौ क्षेत्रों में बांटा गया है और प्रत्येक क्षेत्र को कल्याण आयुक्त के अधिकार में रखा गया है। इन क्षेत्रों के कल्याण आयुक्तों को इस अधिनियम और इसके अधीन बनाए गए नियमों को लागू करने के लिए कल्याण और उपभार आयुक्तों के रूप में नियुक्त किया गया है।

राज्यों और संघ शासित क्षेत्रों में कल्याण आयुक्तों या क्षेत्राधिकार निम्नानुसार हैं :—

क्रमांक	अधिकारी का पदनाम	मुख्यालय	उनके क्षेत्राधिकार में आने वाले राज्यों/संघ राज्य क्षेत्रों का नाम
1	2	3	4
1.	कल्याण आयुक्त, भारत सरकार, श्रम मंत्रालय, जबलपुर।	जबलपुर	मध्य प्रदेश
2.	कल्याण आयुक्त, भारत सरकार, श्रम मंत्रालय, भुवनेश्वर	भुवनेश्वर	उड़ीसा
3.	कल्याण आयुक्त, भारत सरकार, श्रम मंत्रालय, कलकत्ता	कलकत्ता	पश्चिम बंगाल, असम, त्रिपुरा, मेघालय, मणिपुर, नागालैंड, अरुणाचल प्रदेश, मिजोरम और तिब्बत।
4.	कल्याण आयुक्त, भारत सरकार, श्रम मंत्रालय, हलाहाबाद	हलाहाबाद	उत्तर प्रदेश, जम्मू और कश्मीर, हिमाचल प्रदेश, पंजाब, दिल्ली और चंडीगढ़।
5.	कल्याण आयुक्त, भारत सरकार, श्रम मंत्रालय, बंगलौर	बंगलौर	कर्नाटक, केरल और लक्षद्वीप।
6.	कल्याण आयुक्त, भारत सरकार, श्रम मंत्रालय, सीलवाड़ा।	सीलवाड़ा	राजस्थान, गुजरात और हरियाणा।
7.	कल्याण आयुक्त, भारत सरकार, श्रम मंत्रालय, हैदराबाद	हैदराबाद	आन्ध्र प्रदेश, तमिलनाडु, पांडिचेरी, अंडमान और निकोबार द्वीप समूह।
8.	कल्याण आयुक्त, भारत सरकार, श्रम मंत्रालय, नागपुर।	नागपुर	महाराष्ट्र, गोवा, दमन और दीव तथा दादरा और नागर हवेली।
9.	कल्याण आयुक्त, भारत सरकार, श्रम मंत्रालय, कर्मा	कर्मा	बिहार।

3. वर्ष 1987-88 के दौरान निधि के अस्तर्गत मुख्य कल्याण कार्य-कलाप निम्नलिखित हैं :—

क. स्वास्थ्य

कल्याण निधि संगठन द्वारा स्थापित किए गए 36 औपचारिक (आयुर्वेदिक/एलोपैथिक) और एक प्रसूति व बांटा कल्याण केन्द्र द्वारा जूना पत्थर और डोलोमाइट खान कर्मचारियों तथा उनके आश्रितों को

विकसित गृहों की जाती रही। इस वर्ष के दौरान औषधालयों में कुल उपस्थिति 470383 थी। 332 टी.बी. रोगियों के इलाज हेतु 18,785 रुपये की राशि खर्च की गई थी। टी.बी. रोगियों के लिए 24,210 रु. की कुल लागत पर 42 पलंग आरक्षित किए गए थे। घातक और गम्भीर दुर्घटनायाम योजना के अधीन 16 मामलों में सुविधाएं प्रदान की गईं और पीड़ितों को 30601 रुपये की राशि प्रदान की गई थी। 46 खान प्रबंधकों को अपने औषधालयों तथा भ्रू-पताओं के रखरखाव के लिए 12,60,350 रुपये की सहायता अनुदान राशि दी गई थी। एक खान प्रबंधक को एम्बुलेंस बोन की खरीद के लिए 50,710 रु. की वित्तीय सहायता दी गई थी।

ख-शिक्षा :

छात्रवृत्तियां देने संबंधी योजना के अधीन, चूनापत्थर और डोलोमाइट खान के ऐसे नियमित कर्मचारों के पुत्रों और पुत्रियों को छात्रवृत्तियां दी जाती हैं जिनकी मासिक आय 1600 रु. प्रतिमाह से अधिक न हो। इस योजना में पाचवीं कक्षा और उससे ऊपर, तकनीकी शिक्षा, डिग्री पाठ्यक्रमों, विज्ञान और इंजीनियरिंग पाठ्यक्रमों के लिए प्रति विद्यार्थी 15 रु. से लेकर 125 रु. प्रतिमाह तक छात्रवृत्तियां देने की व्यवस्था है। वर्ष 1987-88 के दौरान खान कर्मचारों के 2963 बालकों को 9.46 लाख रुपये की राशि वितरित की गई थी।

मैसर्स द इंडिया सीमेंट लिमिटेड शंकर नगर को एक स्कूल बस की मंजूरी खान कर्मचारों के बालकों को लाने ले जाने हेतु प्रदान की थी तथा इस प्रयोजन हेतु एक लाख रुपये की वित्तीय सहायता दी गई थी। 449 बालकों को स्टेड/वायवुस्तकें प्रदान की गई थी तथा 8060 रु. की राशि मंजूर की गई थी।

ग-मनोरंजन :

रिपोर्टेड वर्य के दौरान जबलपुर क्षेत्र में दो, भुवनेश्वर क्षेत्र में एक, इलाहाबाद क्षेत्र में दो, बंगलौर क्षेत्र में एक, करमा क्षेत्र में दो तथा भीमराड़ा क्षेत्र में एक चलते फिरते सिनेमा एकक काम करते रहे। चूना पत्थर और डोलोमाइट खान कर्मचारों के लाभ के लिए उड़ीसा में पुरी में एक अवकाशगृह भी काम करता रहा। विभिन्न खान प्रबंधकों को 16 मि.मी. के 20 प्रोजेक्टर सहायक उपकरणों के साथ दिए गए हैं और विभाग तथा प्रबंधकों द्वारा फिल्मों के प्रदर्शन पर 3.06 लाख रुपये की राशि खर्च की गई थी। अवकाश गृह तथा भ्रमण व अध्ययन दूर पर 1.30 लाख रुपये की राशि खर्च की गई थी। खेल-कूद मनोरंजन और सांस्कृतिक कार्यक्रमों आदि को आयोजित करने के लिए खान प्रबंधकों को 1.33 लाख रुपये की राशि सहायता अनुदान के रूप में दी गई।

वर्ष 1987-88 के दौरान, चूनापत्थर और डोलोमाइट खान कर्मचारों के लाभ के लिए कुछ स्पोर्ट्स मोटर्स निम्नानुसार आयोजित किए गए थे

क्रमांक	स्पोर्ट्स मोटर का नाम	यजत्रि और खान
1	2	3
1.	राजस्थान और हरियाणा के लिए छठा अन्तर-राज्य स्पोर्ट्स मोटर	22-3-88 से 24-3-88 तक माउंट ब्राबू।
2.	राजस्थान/गुजरात/हरियाणा राज्यों के लिए सातवां अन्तर-राज्य स्पोर्ट्स मोटर	28-10-87 से 30-10-87 तक उदयपुर।
3.	गुजरात राज्य के लिए पहला अन्तर-प्रदेश स्पोर्ट्स मोटर	18-2-88 से 19-2-88 तक पोखरन्दर।

घ-जल आपूर्ति योजना :

खानों के लिए जल गण्टाई हेतु निधि उन छोटे खान मालिकों को, जिनका उत्पादन प्रतिमाह 1,000 मीट्रिक टन से कम है, उनकी जल आपूर्ति योजनाओं के निर्माण हेतु और कुओं की खुदाई के लिए लागत के 75 प्रतिशत की दर से हमारा करना है। बड़े खान मालिकों का निर्माण की वास्तविक लागत के 50 प्रतिशत से अधिक हमारा प्रदान की जाती है। वर्ष के दौरान जबलपुर क्षेत्र में जल आपूर्ति योजना के लिए 2.49 लाख रुपये और भुवनेश्वर क्षेत्र में एक अन्य जल आपूर्ति योजना हेतु 1.49 लाख रुपये की मंजूरी प्रदान की गई थी।

ङ-आवास :

चूना पत्थर और डोलोमाइट खान कर्मचारों के लिए मकान सुविधाएं प्रदान करके रहन-सहन दशाओं में सुधार करना कल्याण निधि के मुख्य कार्यकलापों में से एक मुख्य कार्य है। इस समय, तीन योजनाएं चल रही हैं।

1. टाइप-I आवास योजना,
2. टाइप-II आवास योजना, और
3. अपना मकान स्वयं बनाओ योजना।

(1) टाइप-I आवास योजना के अन्तर्गत, प्रति मकान मानक अनुमानित लागत का 75 प्रतिशत या 10,000/- रु. जो भी कम हो, प्राथमिक सहायता दी जाती है। इस प्राथमिक सहायता का प्रतिशत, सामान्य क्षेत्रों के लिए 1000/- रु. प्रति मकान की दर से और काली कपास या उमरी हुई भूमि वाले क्षेत्रों के लिए 1500 रु. की दर से या विकास की वास्तविक लागत, उनमें से जो भी कम हो, विकास प्रभार भी वेग है। इन विकास प्रभारों में, अन्य बातों के साथ-साथ, बाहरी और भीतरी जन आपूर्ति, सड़क, बिजली और पड़ोस मड़कों का व्यय शामिल है। रिपोर्टेड वर्य के दौरान 30 मकानों की मंजूरी दी गई।

(2) टाइप-II आवास योजना के अन्तर्गत, प्रति मकान प्राथमिक सहायता 20,000 रु. या निर्माण लागत का 75 प्रतिशत, जो भी कम हो, दी जाती है। इसका अभाव, साधारण क्षेत्रों में प्रति मकान 1500 रु. और काली कपास या उमरी हुई भूमि वाले क्षेत्रों में 2250 रु. प्रति मकान की दर से या विकास की वास्तविक लागत, इनमें से जो भी कम हो, विकास प्रभार भी वेग है। इस योजना के अन्तर्गत, वर्ष के दौरान 385 मकानों की मंजूरी दी गई थी।

(3) अपना मकान स्वयं बनाओ योजना के अन्तर्गत, पात्र कर्मकार को 1000 रु. की दर से प्राथमिक सहायता और इसके प्रतिशत 4000 रु. का व्याज रहित ऋण दिया जाता है जो कि 9 वर्ष से अधिक अवधि में मासिक किश्तों में धमूल किया जाता है। रिपोर्टेड वर्य के दौरान, 17 मकानों की मंजूरी दी गई थी।

भाग-II

वर्ष 1987-88 के लिए लेखा विवरण	
पहली अप्रैल, 1987 को आरंभिक अतिशेष	321,09,691
वर्ष 1987-88 के दौरान प्राप्तियां	113,34,888
वर्ष के दौरान व्यय	150,06,606
31-3-1988 को अन्त शेष	275,57,973

भाग-III

वर्ष 1988-89 के दौरान अनुमानित आय और व्यय	
1. अनुमानित व्यय	195,00,000
2. अनुमानित आय	360,00,000

[संख्या जेड-16016/2/88-ड्यू-II]

New Delhi, the 20th January, 1989

S.O. 372.—In pursuance of Section 10 of the Limestone and Dolomite Mines Labour Welfare Fund Act, 1972 (62 of 1972), the Central Government hereby publishes the following report giving an account of its activities financed under the said Act during the year 1987-88 together with the statement of account for that year :—

General :

The Limestone and Dolomite Mines Labour Welfare Fund was constituted under the Limestone and Dolomite Mines Labour Welfare Fund Act, 1972 (62 of 1972), which provides for the levy and collection of cess, at a rate not exceeding one rupee per metric tonne, on so much of Limestone and Dolomite produced in any mine :—

- (i) as is sold or otherwise disposed of to the occupier of any factory ; or
- (ii) as is used by the owner of such mine for any purpose in connection with the manufacture of cement, iron, steel, ferro-alloys, alloy steel, chemicals, sugar,

fertilizers, refractories, iron ore pelletisation or such other article or goods or class of articles or goods, as the Central Government may, from time to time specify by notification in the Official Gazette.

to promote the welfare of the persons employed in Limestone and Dolomite Mines. The proceeds of the cess are being utilised mainly to defray the cost of measures directed towards the improvement of public health and sanitation, provision of medical facilities, provision and improvement of water supply, educational facilities, housing, nutrition and recreation etc.

For administrative convenience, all the States and Union Territories of the country have been divided into nine regions. Each region is under the over all charge of a Welfare Commissioner. The Welfare Commissioners of the areas have been appointed as Welfare and Cess Commissioners for the enforcement of the Act and Rules framed thereunder.

The jurisdiction of the Welfare Commissioners over the State and Union Territories is as under :—

S. No.	Designation of Officer	Head Quarter	Name of the State(s)/Union Territories in their Jurisdiction
1.	Welfare Commissioner, Government of India, Ministry of Labour, Jabalpur.	Jabalpur	Madhya Pradesh
2.	Welfare Commissioner, Government of India, Ministry of Labour, Calcutta.	Calcutta	West Bengal, Assam, Tripura, Meghalaya, Manipur, Nagaland, Arunachal Pradesh, Mizoram and Sikkim.
3.	Welfare Commissioner, Government of India, Ministry of Labour, Bhubaneswar.	Bhubaneswar	Orissa
4.	Welfare Commissioner, Government of India, Ministry of Labour, Allahabad.	Allahabad	Uttar Pradesh, Jammu & Kashmir, Himachal Pradesh, Punjab, Delhi and Chandigarh.
5.	Welfare Commissioner, Government of India, Ministry of Labour, Bangalore.	Bangalore	Karnataka, Kerala and Lakshadweep.
6.	Welfare Commissioner, Government of India, Ministry of Labour, Bhilwara.	Bhilwara	Rajasthan, Gujarat and Haryana.
7.	Welfare Commissioner, Government of India, Ministry of Labour, Hyderabad.	Hyderabad	Andhra Pradesh, Tamil Nadu, Pondicherry, Andaman and Nicobar Islands.
8.	Welfare Commissioner, Government of India, Ministry of Labour, Nagpur.	Nagpur	Maharashtra, Goa, Daman and Diu and Dadra & Nagar Haveli.
9.	Welfare Commissioner, Government of India, Ministry of Labour, Karma.	Karma	Bihar

3. The following are the main welfare activities under the Fund during the year 1987-88 :—

A—Health

36 dispensaries (Ayurvedic/Allopathic) and one Maternity-cum-child Welfare Centre set up by the Welfare Fund Organisation continued to give medical treatment to the Limestone and Dolomite Mine Workers and their dependents. The total attendance in the dispensaries during the year was 4/0382. A sum of Rs. 18,705 was spent on treatment of 332 1B patients. 42 Beds were reserved for I.B. patients at a total cost of Rs. 24,210. Benefits were provided to 16 cases under the Fatal and Serious Accident Benefits Scheme and an amount of Rs. 30,001 was given to the victims.

Grant-in-aid amounting to Rs. 12,60,350 was paid to 46 mine managements for maintaining their own dispensaries and hospitals. One mine management was given financial assistance of Rs. 50,118 for purchase of Ambulance van.

B—Education :

Under the scheme for the award of Scholarships benefits are provided to the sons and daughters of the regular limestone and dolomite mine workers whose monthly income does not exceed Rs. 1600 p.m. The scheme envisages award of scholarships to the students of Class V and above, technical education, degree courses, medical and engineering courses at the rates varying from Rs. 15 to Rs. 125 per month per student. During 1987-88 a sum of Rs. 9.46 lakhs was distributed to 2963 children of mine workers.

One school bus was sanctioned to M/s. India Cement Limited, Sankarnagar for transportation of children of mine workers and financial assistance of Rs. one lakh was given for this purpose. 449 children were provided states, text books etc. and a sum of Rs. 8060 sanctioned.

C—Recreation :

Two mobile Cinema Units in Jabalpur region, one in Bhubaneswar region, 2 in Allahabad region, 1 in Bangalore region, 2 in Karma region and one in Bhilwara region continued to function during the year under report. A Holiday Home at Puri in Orissa was also functioning for the benefit of Limestone and Dolomite Mine workers. Twenty-eight 16 MM Projectors with accessories have been provided to different mine-managements and a sum of Rs. 3.06 lakhs was spent on exhibition of films by the Department and Managements. An amount of Rs. 1.38 lakhs was spent on Holiday Home and Excursion-cum-Study Tours. For organising sports, games and cultural activities etc. a sum of Rs. 1.33 lakhs was given as grant-in-aid to the mine-managements.

During the year 1987-88, some of the Sports Meets for the benefit of Limestone and Dolomite Mine Workers were organised as under :

S. No.	Name of Sports Meet	Period and Place
1.	6th Inter-management Sports meet from Rajasthan and Haryana.	Mount Abu from 22-2-88 to 24-3-1988
2.	7th Inter-management Sports for Rajasthan/Gujarat/Haryana States.	Udaipur from 28-12-1987 to 30-10-1987
3.	1st Inter-management Sports Meet for Gujarat State.	Porbander from 18-2-1988 to 19-2-1988.

D—Water Supply Scheme :

For water supply to the mines, Fund gives subsidies to the small mine owners whose production is less than 3,000 metric tonnes per month, at the rate of 75% of the cost of construction for their water supply schemes and sinking of wells. The big mine owners are paid subsidy not exceeding 50% of the actual cost of construction. A sanction of

Rs. 2.49 lakhs for water supply scheme in Jabalpur region and another one in Bhubaneswar region for Rs. 1.49 lakhs were accorded during the year.

E—Housing :

Improvement of living conditions by providing housing facilities for limestone and dolomite mine workers is one of the major activities of the Welfare Fund. Presently, there are three schemes in vogue, namely :—

1. Type I Housing Scheme,
2. Type II Housing Scheme, and
3. Build Your Own House Scheme.

(1) Under Type I Housing Scheme subsidy, per tenement is paying at the rate of 75% of the standards estimated cost or Rs. 10,000, whichever is less. In addition to the subsidy development charges are also payable at the rate of Rs. 1000 per tenement for ordinary areas and Rs. 1,500 for black cotton or swelly soil areas or the actual cost of development whichever is less. The development charges inter-alia are for external and internal water supply, sanitation, electricity and approach roads. During the year under report 30 houses were sanctioned.

(2) Under the Type II Housing Scheme subsidy per tenement is payable at the rate of Rs. 20,000 or 75% of the cost of construction, whichever is less. In addition development charges are also payable at the rate of Rs. 1500 per cotton or swelly soil areas or the actual cost of development tenement in ordinary areas and Rs. 2250 per house in black whichever is less. Under the Scheme 385 houses were sanctioned during the year.

(3) Under the Build Your Own House Scheme financial assistance is given to an eligible worker at the rate of Rs. 1000 as subsidy besides interest free loan of Rs. 4,000 refundable in monthly instalments spread over a period of 9 years. During the year under report 17 houses were sanctioned.

Part II

Statement of Account for year 1987-88	Rupees
Opening balance as on 1st April, 1987	321,09,691
Receipt during the year 1987-88	113,34,888
Expenditure during the year	158,86,606
Closing balance as on 31-3-1988	275,57,973

Part III

Estimated Receipts and Expenditure for the year 1988-89

1. Estimated Expenditure	195,00,000
2. Estimated Receipt	3,60,00,000

[No. Z-16016/2/88-W. II]

का. धा. 373:—लौह अयस्क खान, मैंगनीज अयस्क खान और क्रोम अयस्क खान अथ कल्याण निधि अधिनियम, 1976 (1976 का 81) की धारा 10 के अनुसरण में केन्द्रीय सरकार वित्तीय वर्ष 1987-88 के दौरान उस वर्ष के लिए लेखों के विवरण सहित इस अधिनियम के अंतर्गत वित्तीय कार्यकलापों पर निम्नलिखित रिपोर्ट प्रकाशित करती है।

भाग-1

(क) सामान्य : लौह अयस्क खान अथ कल्याण उपकर अधिनियम, 1961 को लौह अयस्क खान उद्योग उपयोग में कार्यरत खनिकों के कल्याण को बढ़ाने के लिए वित्तीय कार्यकलापों के लिए उपकर लगाने और एकत्रित करने की व्यवस्था करने के लिए बनाया गया था। यह अधिनियम 1 जनवरी, 1963 को लागू हुआ। इस अधिनियम को लौह अयस्क खान, अथ कल्याण उपकर संशोधित अधिनियम, 1970 (1970 का 41)

द्वारा जो पहली अक्टूबर, 1974 को लागू किया गया था और पुनः लौह अयस्क खान और मैंगनीज अयस्क खान श्रम कल्याण उपकर अधिनियम, 1976 (1976 का 55) द्वारा जो कि पहली सितम्बर, 1978 से लागू हुआ प्रतिस्थापित किया गया जिससे मैंगनीज अयस्क खानों में नियुक्त कर्मचारी भी इसके अन्तर्गत आ गए। पिछली बार संशोधन निम्नलिखित किये गये थे :

- (i) लौह अयस्क खान और मैंगनीज अयस्क खान और क्रोम अयस्क खान श्रम कल्याण निधि (संशोधन) अधिनियम, 1982 (1982 का 45)।
- (ii) लौह अयस्क खान और मैंगनीज अयस्क खान और क्रोम अयस्क खान श्रम कल्याण उपकर (संशोधन) अधिनियम, 1982 (1982 का 44)।

1982 के संशोधन द्वारा पहली जुलाई, 1983 से क्रोम अयस्क पर उपकर उसी प्रकार लगाया गया है और एकत्रित किया गया है जैसे लौह अयस्क और मैंगनीज अयस्क के लिए होता है और क्रोम अयस्क खानों में नियुक्त कर्मचारियों को शामिल किया गया है। इस अधिनियम में निर्धारित किए गए या आंतरिक रूप से उपयोग किए गए लौह अयस्क पर एक रुपया प्रति मीट्रिक टन, मैंगनीज अयस्क और क्रोम अयस्क पर छह रुपये प्रति मीट्रिक टन से अधिक की दर से उपकर लगाने के लिए व्यवस्था है। लौह अयस्क पर उपकर लगाने की दर पहली जुलाई, 1981 से 25 पैसे प्रति मीट्रिक टन से बढ़ाकर 50 पैसे प्रति मीट्रिक टन कर दी गई थी। मैंगनीज अयस्क और क्रोम अयस्क पर उपकर की वर्तमान दर क्रमशः एक रुपया प्रति मीट्रिक टन और तीन रुपये प्रति मीट्रिक टन है। उपकर की राशि का उपयोग मुख्यतः सार्वजनिक स्वास्थ्य और सफाई, बीमारियों की रोकथाम और आवास सुविधाओं आदि के सुधार पर किया जाता है। कल्याण सुविधाओं को सीधे या ठेकेदारों के माध्यम से नियुक्त कर्मचारियों को दी जाती है।

इस उपकर को निर्धारित किए गए लौह अयस्क, मैंगनीज अयस्क और क्रोम अयस्क पर सीमा शुल्क के रूप में और आंतरिक खपत किए गए अयस्क पर उत्पाद शुल्क के रूप में लगाया जाता है। कल्याण आयुक्तों को उपकर आयुक्त भी घोषित किया गया है और आंतरिक खपत पर उपकर एकत्रित करने के उद्देश्य से उनका क्षेत्राधिकार अधिसूचित किया गया है। कल्याण उपकर की सीमाशुल्क के रूप में सीमाशुल्क विभाग द्वारा एकत्रित किया जाता है, जिन्हें एकत्रीकरण प्रभार के रूप में एक प्रतिफल दिया जाता है।

कल्याणकारी कार्यकलाप

कल्याणकारी कार्यकलाप वर्षों के दौरान जिनकी वित्त व्यवस्था कल्याण निधि से की गई थी, नीचे दिए गए हैं :—

(i) चिकित्सा सुविधाएं :

उन कर्मचारियों और उनके आश्रितों को जो 1600 रुपये तक मूल वेतन प्राप्त कर रहे हैं निधि संगठन द्वारा चिकित्सा सहायता दी गई। इन कर्मचारियों और उनके आश्रितों को 4 केन्द्रीय अस्पतालों (बिहार, उड़ीसा, कर्नाटक और गोवा प्रत्येक में एक) तथा निधि संगठन के अधीन स्थापित किए गए 20 चलते-फिरते स्थिर औपचारिक तथा प्राथमिक स्वास्थ्य केन्द्रों में सुविधाएं उपलब्ध कराई गई थी। वर्षों के दौरान औपचारिकों में रोगियों की कुल संख्या 216620 थी। इन चार अस्पतालों में बाह्य और अन्तर्गत रोगियों की संख्या क्रमशः 87286 तथा 10200 थी। औपचारिकों तथा अस्पतालनों में दवाइयों पर 14.42 लाख रुपये की राशि खर्च की गई। गुरुडा (उड़ीसा) में एक प्रसूति-एवं-बाल केन्द्र खोला गया है। बालाघाट में 50 पलंगों वाला अस्पताल कम्पलैक्स का निर्माण पूरा हो गया है तथा इसे भीषण ही आरम्भ कर दिया गया। क्षय रोग से पीड़ित कर्मचारियों के लिए 15 पलंग आरक्षित किए गए हैं। कुष्ठ रोग राहत योजना के अधीन, 3 रोगियों को कुष्ठ रोग अस्पताल पुरुलिया (बिहार) में जांच के

लिए भेजा गया। दो क्षय रोग के दो रोगियों को घरेलू इलाज दिया गया तथा उनके आश्रितों को निवाह भत्ते के रूप में 806/- रु. की राशि दी गई। कैंसर से पीड़ित दो कर्मचारों का इलाज किया गया तथा उन्हें दवाई खर्च की 6056/- रु. की प्रतिपूर्ति की गई। मानसिक बीमारियों से पीड़ित चार खनिकों का इलाज किया गया तथा इन बीमा व्यक्तियों को दवाई खर्च के 3681/- रु. की प्रतिपूर्ति की गई एक रोगी को दिल की बीमारी के इलाज के लिए 3524/- रु. की प्रतिपूर्ति की गई। घातक और गम्भीर दुर्घटना लाभ योजना के अधीन, 14 कर्मचारों को लाभ मिला तथा 18,630/- रु. खर्च किए गए। 25 खान, प्रबंधतंत्रों को अपने अस्पतालों, औपचारिकों, प्रसूति केन्द्रों आदि के अनुरक्षण के लिए अनुदान के रूप में 1751505/- रु. दिए गए। 4 खान प्रबंधतंत्रों को एम्बुलेंस वैन खरीदने के लिए 2,20,000/- रु. का सहायता अनुदान दिया गया।

(ii) आवास सुविधाएं :—

खनिकों के लिए मकानों की व्यवस्था करना इस निधि के मुख्य कार्य-कलापों में से एक है। इस समय तीन योजनाएं चल रही हैं, अर्थात् :—

- (1) टाइप I आवास योजना
- (2) टाइप II आवास योजना
- (3) अपना मकान स्वयं बनाओ योजना।

(1) टाइप I आवास योजना के अन्तर्गत, 4-8-87 से मकानों के निर्माण के लिए खान प्रबंधतंत्रों को वेध आर्थिक सहायता को वास्तविक लागत के 75% या 7500/- रु. से बढ़ाकर निर्माण की वास्तविक लागत का 75% या 10,000/- रु. जो भी कम हो, कर दिया गया। इन आर्थिक सहायता के अतिरिक्त, साधारण मिट्टी वाले क्षेत्रों में 1000/- रु. प्रति मकान और काली या उभरी मिट्टी वाले क्षेत्रों में 1500/- रु. प्रति मकान की दर से या वास्तविक लागत, जो भी कम हो, विकास प्रभार भी देय है। वित्तीय वर्ष के दौरान मकानों के निर्माण के लिए 6 खान प्रबंधतंत्रों को 4,03,050 रुपये की राशि दी गई। प्रबंधतंत्रों से निधि की सहायता से बनाए गए मकानों के किराये के रूप में 1437/- रु. की राशि वसूल की गई है।

(2) टाइप II आवास योजना के अन्तर्गत, 4-8-87 से मकानों के निर्माण के लिए खान प्रबंधतंत्रों को दी आर्थिक सहायता को बढ़ाकर 1500/- रु. या निर्माण की वास्तविक लागत के 75% से 20000/- या वास्तविक निर्माण लागत का 75% जो भी कम हो, कर दिया गया। इसके अलावा, साधारण मिट्टी वाले क्षेत्रों में 1500/- रु. प्रति मकान और काली या उभरी मिट्टी वाले क्षेत्रों में 2250/- रु. प्रति मकान, जो भी कम हो, की दर से विकास लागत भी देय है।

मकानों के निर्माण के लिए खान प्रबंधतंत्रों को वास्तव में 17.30 लाख रुपये की राशि दी गई (जिनमें पहले मंजूर की गई राशि शामिल है)। प्रबंधतंत्रों से निधि की सहायता से बनाए गए मकानों के किराये के रूप में 87,047/- रु. की राशि वसूल की गई।

(3) अपना मकान स्वयं बनाओ योजना के अन्तर्गत किसी पात्र खान कर्मकार को उसके अकेले के या परिवार के अन्य सदस्य के स्वामित्वाधीन या सरकार या अन्य किसी एजेंसी द्वारा अधिगृहित ऋण रहित या पट्टे पर आवंटित किसी प्लॉट पर मकान बनाने के लिए 1000/- रु. की आर्थिक सहायता तथा 4000/- रु. की व्याज मुक्त ऋण राशि दी जाती है जो राशि 9 वर्ष से अधिक की अवधि में समान मासिक किस्तों में वापिस ली जाती है।

रिपोर्टधीन वर्ष के दौरान, इस योजना के अधीन कर्मचारियों को 35 मकानों के निर्माण के लिए 79,200/- रु. की राशि मंजूर की गई। अपना मकान स्वयं बनाओ योजना के अधीन मकानों के निर्माण के

लिए स्वीकृत व्याज मुक्त ऋण में खनिकों से 1910/— रु. वसूल किए गए।

जल आपूर्ति : खनिकों के लिए जल आपूर्ति की व्यवस्था करने के लिए सधु खान मालिकों (जिनका उत्पादन 3000 टन प्रति माह से कम है) की इस तिथि से जल आपूर्ति योजना और कुएं खोदने के लिए निर्माण की वास्तविक लागत का 75/— की दर से सहायता दी जाती है। बड़ी खानों के मालिकों को वास्तविक लागत के 50% से अधिक सहायता का भुगतान किया जाता है। संबंधित प्रबंधनकों को जल आपूर्ति योजना के लिए सहायता अनुदान की दी गई राशि निम्न तालिका में दी गई है :—

क्रमांक प्रबंधनक का नाम	संजूर की गई राशि
1. मैसर्स एन. एम. डी. सी. डिपो में, 5 बचेली	6,97,5000/—रु.
2. मैसर्स आई. आई. एम. ओ. लि. की गुआ अयरात खानें 5,00,000/रु.	
3. मैसर्स मिरभोर देखगरी (टैक्स टैक से 249 आर सी. 10 12,000/रु. (अंतिम भुगतान)	
4. मैसर्स मंगनीज ओर (इंडिया) लि.	
(i) कादरी	
(ii) वेल्डिंगरी	
	1,10,655/—रु.
कुल	14,16,166/रु.

2. कुएं खोदकर खनिकों को पीने का पानी उपलब्ध कराने की योजना के तहत, मैसर्स पी. बानासुख गेट्टी एण्ड सन्स, होसपेट को 4935/— रु. (अंतिम भुगतान) की राशि संजूर की गई।

4. शिक्षा और मनोरंजन सुविधाएं :— छात्रवृत्ति देने, पाठ्यपुस्तकों का सहाई तथा दोपहर के भोजन की योजना से संबंधित स्थिति निम्नानुसार है :—

क्रमांक योजना का नाम	लाभानुभोगियों की संख्या	खर्च की गई राशि (रुपये)
1. छात्रवृत्तियां	4267	12,72,730 रु.
2. पुस्तकों, स्टेपों आदि की सप्लाई	2015	34,640—रु.
3. दोपहर का भोजन	215	0,261—रु.

मैसर्स मैसूर मिनेरल्स लि. का बैरापुर क्रोमाईट साईन्स, केम्बाल, हसन जिला तथा दामजी आयर्न और साईन्स (उड़ीसा) को स्कूल जाने वाले बच्चों के लिए शैक्षिक खरीदने हेतु सहायता अनुदान के रूप में प्रत्येक को 50,000— रु की राशि दी गई।

अल-हूद खेल, समाजिक व सांस्कृतिक क्रियाकलाप करने के लिए 92,207— रु. खर्च किए गए। खनिकों के भ्रमण — व — अध्ययन दोनों की व्यवस्था करने के लिए मैसर्स एम. एम. आई. ओ. आर. डी. को 10,000—रु. का भुगतान किया गया।

मैसर्स आर. बी. एन. एम. डी. एड. एफ. एन. दाम धी राम तगूर के लिए एक रेलिंग टी. बी. रोड संजूर किया गया।

कारागार में जाने फिरते मिनेमा के भाष्यम से फिल्में प्रदर्शित करने के लिए 23,160— रु. खर्च किए गए तथा फिल्म किराये की लागत को

प्रतिपूर्ति के लिए निम्नलिखित खान प्रबंधनकों को सहायता अनुदान दिया गया :—

(1) कुदरेमुख आयर्न ओर साईन्स	0630.00 रु.
(2) विन्सोट मंगनीज साईन्स	17,693.00 रु.
(3) बैरापुर क्रोमाईट साईन्स	14,966.00 रु.

भाग	
पड़ोती अप्रैल 1987 को अयशेष	422.90 लाख रुपए
वर्ष 1987-88 के दौरान प्राप्ति	257.04 लाख रुपए
वर्ष 1987-88 के दौरान व्यय	4243.75 लाख रु.
31-3-000 का अन्तशेष	436.27 लाख रु.

भाग III

वर्ष 1988-89 के लिए अनुमानित प्राप्तियां और व्यय

1. अनुमानित व्यय	399.00 लाख रुपए
2. अनुमानित प्राप्ति	270.00 लाख रुपए

[सं. जेड 16016/ 4/88 कल्याण-II]

अभिभूषण, अवर सचिव

S.O. 373.—In pursuance of Section 10 of the Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labour Welfare Fund Act, 1976 (61 of 1976) the Central Government hereby publishes the following report on the activities financed under the Act during the financial year 1987-88 together with a statement of accounts for that year.

PART I

(a) General.—The Iron Ore Mines Labour Welfare Cess Act, 1961, was enacted to provide for levy and collection of cess on Iron Ore for financing of activities to promote the Welfare of Miners working in the Iron Ore mining industry. The Act came into force on 1st October, 1963. The Act was replaced by the Iron Ore Mines Labour Welfare Cess Amendment Act, 1970 (41 of 1970) which was brought into force from 1st October, 1974, and again by the Iron Ore Mines and Manganese Ore Mines Labour Welfare Cess Act, 1976 (55 of 1976) which came into effect from 1st September, 1978 by which workers employed in manganese Ore Mines were also covered. The last amendments were read as under :—

(i) Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labour Welfare Fund (Amendment) Act, 1982 (45 of 1982).

(ii) Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labour Welfare Cess (Amendment) Act, 1982 (44 of 1982).

By the amendment of 1982, cess has been levied and collected on Chrome Ore with effect from 1st July, 1983, in the same manner as is done for iron and Manganese Ore and workers employed in Chrome Ore Mines have also been covered. The Act provides for the levy of cess at a rate not exceeding one Rupee per metric tonne on Iron Ore, six Rupees per metric tonne on manganese ore and chrome ore exported or internally consumed. The rate of levy of cess on iron ore was increased from 25 paise per metric tonne to 50 paise per metric tonne with effect from 1st July, 1981. The present rate of cess on manganese ore and chrome ore is Re. 1.00 per metric tonne and Rs. 3.00 per metric tonne, respectively. The proceeds of the cess are utilised mainly for improvement of public health and sanitation, prevention of diseases and improvement of housing, etc. The welfare facilities are extended to workers employed directly or through contractors.

The cess is levied as duty of custom on the iron ore, manganese ore and chrome ore exported and as a duty of excise on the ore consumed internally. The Welfare Commissioners have also been declared Cess Commissioners and their jurisdiction has been nounced for the purpose of collection of cess on internal consumption. The collection of welfare cess as a custom duty is made by the Department of Customs who are paid one per cent of the proceeds as collection charges.

Welfare Activities—The welfare activities under different heads which were financed during the year from the Welfare Fund are indicated below :

(i) **Medical Facilities**—The workers and their dependents who are getting a basic pay upto Rs. 1600 were provided medical aid by the Fund Organisation. Facilities were made available to the workers and their dependents in the 4 Central hospitals (one each in Bihar, Orissa, Karnataka and Goa) and 20 Mobile/Static Dispensaries and Primary Health Centres established under the Fund Organisation. During the year the total attendance in Dispensaries was 216620. The attendance in O.P.D. and number of indoor patients in the 4 hospitals was 87286 and 10288 respectively. A sum of Rs. 14.42 lakhs was spent on purchase of medicines at the dispensaries and hospitals. One Maternity-cum-Child Centre at Guruda (Orissa) has been opened. A 50 bedded Hospital Complex at Balaghat has been completed and is to be commissioned soon 15 beds for workers suffering from T.B. have been reserved. Under the Leprosy Relief Scheme, 3 patients were referred for check up at Leprosy Home Purillia (Bihar). Two T.B. patients got domiciliary treatment and a sum of Rs. 806 was given as subsistence allowance to their dependents. Two workers suffering from cancer were treated and a sum of Rs. 6056 was reimbursed as medical charges to them. For miners suffering from mental diseases were treated and an amount of Rs. 3681 was reimbursed as medical charges to these patients. On patient was reimbursed Rs. 3,524 for treatment of heart disease. Under Fatal and Serious Accident Benefit Scheme 14 workers received benefits and an expenditure of Rs. 18,638 was incurred. 25 Mine-managements were paid Rs. 17,51,505 as grant-in-aid for maintaining their own hospitals, dispensaries, maternity centres etc. 4 mine-management were paid Rs. 2,20,000 as grant-in-aid for purchasing ambulance van.

(ii) **Housing Facilities :**

Provision of housing accommodation for miners is one of the main activities of the Fund. Presently there are three schemes in vogue namely :—

(1) **Type-I Housing Scheme ;**

(2) **Type-II Housing Scheme ;**

(3) **Build Your Own House Scheme.**

(1) Under the Type-I Housing Scheme, from 4-8-87 subsidy payable to mine managements for construction of houses has been enhanced from 75% of the actual cost or Rs. 7500, to 75% of actual cost of construction or Rs. 10,000 whichever is less. In addition to the subsidy development charges are also payable at the rate of Rs. 1000 per tenement in respect of ordinary soil areas and Rs. 1500 for black cotton or swelly soil areas or the actual cost whichever is less. During the financial year a sum of Rs. 403058 was released to 6 Mine-managements for construction of houses. A sum of Rs. 1437 has been recovered from the managements as rent for the houses which were constructed with the help of Funds assistance.

(2) Under the Type-II Housing Scheme, from 4-8-87 subsidy paid to mine-managements for construction of houses has been enhanced from Rs. 15,000 or 75% of actual cost of construction to Rs. 20,000 or 75% of actual cost of construction whichever is less. In addition, development charges are also payable at the rate of Rs. 1500 per house in ordinary soil areas and Rs. 2250 in respect black cotton or swelly soil area or the actual cost of development, whichever is less.

A sum of Rs. 17.30 lakhs was actually disbursed to mine-managements (including amounts against old sanctions) for construction of houses. A sum of Rs. 67,047 was recovered from the managements as rent of the houses which were constructed with the help of Funds assistance.

(3) Under Build Your Own House Scheme financial assistance of Rs. 1000 as subsidy and an interest free loan of Rs. 4000 recoverable in equal monthly instalments spread over a period not exceeding 9 years is paid to an eligible mine worker for construction of a house on a plot owned by him/her individually or jointly with other members of the family or acquired/allotted by the Government or any other agency on free hold or lease hold basis.

A sum of Rs. 79,400 was sanctioned for construction of 35 houses to workers under this scheme during the year under report. A sum of Rs. 1010 was recovered from the miners against the interest free loan sanctioned for the construction of houses under Build Your Own House Scheme.

Water Supply—To provide water to the miners, Fund gives subsidy to the small mine owners (whose production is less than 3000 tonnes per month) at the rate of 75% of the actual cost of construction towards their water supply scheme and sinking of wells. The big mine owners are paid subsidy not exceeding 50% of the actual cost of construction. The amounts paid to the respective managements as grant-in-aid for water supply schemes are given in the table below :—

Sl. No.	Name of the Managements	Amounts sanctioned Rs.
1.	M/s N.M.D.C. Dcp. No. 5 Bachel	6,97,500
2.	M/s Gua Ore Mines of (IICC) Ltd.	5,88,000
3.	M/s SIMORE DEOGIRI (RCC over Head Tank)	12,000
4.	M/s Manganese Ore (India) Ltd. at	
	(i) Kandri	1,18,655
	(ii) Beldongri	
Total		14,16,155

2. Under the scheme for providing drinking water to the miners by sinking wells, a sum of Rs. 4,935 (final payment) was sanctioned to M/s. Balasubba-Setty and Sons, Hospet.

(4) **Education and Recreational Facilities**—The position regarding awards of scholarship, supply of text-books and mid-day meal Scheme etc. is given below :—

Sl. No.	Name of Scheme	No. of beneficiaries	Amount spent (Rs.)
1.	Scholarships	4267	12,72,730
2.	Supply of Books, Slates etc.	2015	34,640
3.	Mid-day-Meal	215	8,261

Byrapur Chromite Mines of M/s. Mysore Minerals Limited, Kambal Hassan District and Daitari Iron Ore Mine (Orissa) were paid Rs. 50,000 each as grant-in-aid for purchasing vehicle for School going children.

For organising sports, games, social and cultural activities a sum of Rs. 92,287 was spent. M/s. SIMORE Deogiri were paid Rs. 10,000 as granted-in-aid for arranging excursion-cum-study tours of miners.

One colour T.V. Set was sanctioned to M/s. RSSD and F. N. Das, Shreeramnagar. A sum of Rs. 23,160 was spent for exhibition of films through Mobile Cinema at Kariganur and grant-in-aid to the following mine-mangement towards re-imbursement of film hire charges was given as under :—

(1) Kudermukh Iron Ore Mines	Rs. 638.00
(2) Bisgod Manganese Mines	Rs. 17,693.00
(3) Byrapur Chromite Mines	Rs. 14,966.00

PART II

(In Lakhs)

Opening balance as on 1st April, 1987	Rs. 422.98
Receipt during the year 1987-88	Rs. 257.04
Expenditure during the year 1987-88	Rs. 243.75
Closing Balance as on 31-3-1988	Rs. 436.27

PART III

Estimated Receipt and Expenditure for the year 1988-89

(In Lakhs)

1. Estimated Expenditure	Rs. 399.00
2. Estimated Receipt	Rs. 270.00

[No. Z-16014/4/88-W. II]

SHASHI BHUSHAN, Under Secy.

नई दिल्ली, 20 जनवरी, 1989

का. आ. 374.—भारत सरकार, श्रम मंत्रालय की अधिसूचना संख्या का. आ. 1633 दिनांक 16 अप्रैल, 1982 द्वारा गठित श्रम न्यायालय, इनाकुलम के कार्यालय में पीठासीन अधिकारी के कार्यालय में एक पत्र रिक्त हुआ है ;

अतः अब, औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 8 के उपबंधों के अनुसरण में, केन्द्रीय सरकार श्री. आर. रवीन्द्रन को 6 दिसम्बर, 1988 के पूर्वाह्न से उक्त श्रम न्यायालय का पीठासीन अधिकारी नियुक्त करती है।

[सं. एम -11025/6/82/डी I-(ए)]

New Delhi, the 20th January, 1989

S.O. 374.—Whereas a vacancy has occurred in the office of the Presiding Officer of the Labour Court, Ernakulam constituted by the notification of the Government of India in the Ministry of Labour No. S.O. 1633 dated the 16th April, 1982;

Now, therefore, in pursuance of the provisions of section 8 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby appoints Shri R. Raveendran as the Presiding Officer of the said Labour Court, with effect from the forenoon of the 6th December, 1988.

[No. S-11025/6/82-D.I(A)]

नई दिल्ली, 25 जनवरी, 1989

का. आ. 375.—केन्द्रीय सरकार का यह समाधान हो जाने पर कि लोकहित में ऐसा करना प्रयोज्य है, औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 2 के खण्ड (ण) की उपधारा (vi) के अनुसरण में भारत सरकार के श्रम मंत्रालय की तारीख 4 जुलाई, 1988 की अधिसूचना संख्या 2275 के तहत दिल्ली दुग्ध योजना के अधीन दुग्ध आपूर्ति उद्योग को उक्त अधिनियम के प्रयोजनार्थ 29

जुलाई, 1988 से छह माह की कालावधि के लिए शोकोपयोगी सेवा घोषित किया था।

और केन्द्रीय सरकार की राय है कि लोकहित में उक्त अवधि को और छह माह के लिए बढ़ाना प्रयोज्य है।

अतः अब औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 2 के खण्ड (ण) की उपधारा (vi) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार उक्त उद्योग को उक्त अधिनियम के प्रयोजनार्थ 29 जनवरी, 1989 से छह माह की कालावधि के लिए शोकोपयोगी सेवा घोषित करती है।

[संख्या एम 11017/14/81-डी -I (ए)]

नन्द लाल, अवसर सचिव

New Delhi, the 25th January, 1989

S.O. 375.—Whereas the Central Government having been satisfied that the public interest so required had in pursuance of the provision of sub-clause (vi) of clause (n) of section 2 of the Industrial Disputes Act, 1947 (14 of 1947), declared by the notification of the Government of India in the Ministry of Labour S.O. No. 2275 dated the 4th July, 1988 the industry for the supply of milk under the Delhi Milk Scheme to be a public utility service for the purposes of the said Act, for a period of six months from the 29th July, 1988;

And, whereas, the Central Government is of opinion that public interest requires the extension of the said period by a further period of six months;

Now, therefore, in exercise of the powers conferred by the proviso to sub-clause (vi) of clause (n) of section 2 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby declares the said industry to be a public utility service for the purpose of the said Act, for a further period of six months from the 29th January, 1989.

[No. S-11017/14/81-D.I(A)]

NAND LAL, Under Secy.

नई दिल्ली, 23 जनवरी, 1989

का. आ. 376.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबन्धन के संबंध नियोजकों और उनके कर्मचारियों के बीच अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कलकत्ता के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को प्राप्त हुआ था।

New Delhi, the 23rd January, 1989

S.O. 376.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Calcutta as shown in the Annexure in the industrial dispute between the employers in relation to the Punjab National Bank and their workmen, which was received by the Central Government.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
AT CALCUTTA

Reference No. 38 of 1986

PARTIES :

Employer in relation to the management of Punjab
National Bank.

AND

Their Workmen.

APPEARANCES :

On behalf of Employer.—Mrs. M. Chatterjee, Law
Officer of the Bank.On behalf of Workmen.—Mr. T. P. Gorai, General
Secretary of the Union.

STATE : WEST Bengal.

INDUSTRY : Banking.

AWARD

By Order No. I-12011(15)(85-D.IV(A) dated 18-4-1986,
the Government of India, Ministry of Labour, referred the
following dispute to this Tribunal for adjudication :“Whether the action of the management of Punjab
National Bank, 15, Park Street, Calcutta-700016 in
not paying the scale of wages to temporary work-
men as per list attached and also not absorbing
them in Bank's service is justified ? If not, to what
relief are these workmen entitled ?”

LIST

Sl. No. Name

1. S/Shri Krishna Prasad (working since 1981).
2. S/Shri Pitambar Cuchhait (working since 1976).
3. S/Shri Mahesh Kr. Das (working since 1981).
4. S/Shri Shyam Balmiki (working since 1981).
5. S/Shri Gadadhar Jena (working since 1981).
6. S/Shri Paresh Hela (working since 1983).

2. When the case is called out today, both parties sub-
mit that they have arrived at a settlement and files a
Joint Petition of Compromise, duly signed by them. They
pray for an Award in terms of the Joint Petition of Com-
promise.

3. Considered the said Joint Petition of Compromise as
well as the submission of both sides. The terms of the
Joint Petition of Compromise appear to be fair, reasonable
and in the interest of the parties. I therefore, accept the
same and pass an 'Award' in terms of the said Joint Peti-
tion of Compromise which do form part of this Award as
Annexure-'A'.

This is my Award.

Dated, Calcutta,

The 27th December, 1988.

SUKUMAR CHAKRAVARTY Presiding Officer

ANNEXURE 'A'

BEFORE THE CENTRAL GOVT. INDUSTRIAL
TRIBUNAL AT CALCUTTA

Ref. No. 38/1986

PARTIES :

Employers in relation to the Management of Punjab
National Bank.

AND

Their Workmen

JOINT APPLICATION BY THE PARTIES

The parties respectfully submit as under :—

The above matter is pending for adjudication with the
following terms of reference.

SCHEDULE

“Whether the action of the Management of Punjab
National Bank, 15 Park Street, Calcutta-700016 in
not paying the Scale of Wages to temporary work-
men as per list attached and also not absorbing
them in Bank's service is justified ? If not, to what
relief are these workmen entitled ?”The matter was being discussed between the parties at
Regional level as well as H. O. level. As a result of the
said understanding, Shri Krishna Prasad, Sl. No. 1 has been
appointed in the service of the Bank with effect from
8-8-1988.Shri Paresh Hela, Sl. No. 6 has also been appointed in
the service of the Bank with effect from 28-5-1983.In the case of Shri Shyam Balmiki, it has been agreed
that he will continue to get opportunity for working on
temporary basis as at present and he will be eligible for
absorption in the service of the Bank as and when his turn
arrives in due course.In the matter of the remaining 3 cases i.e. S/Shri Pitambar
Cuchhait, Mahesh Kumar Das and Gadadhar Jena, the Union
has not been able to produce any records relating to their
employment, etc. and their where abouts are not known.In view of the above, the Union agrees that their grievances
are fully satisfied.The parties, therefore, pray that an 'Award' may be passed
in terms of the above.

It is requestfully prayed accordingly

T. P. Gorai,

Dt. 24-12-88.

General Secretary,

PNB Employees Union,

Regd. Office, 18A Brabourne Road,

Calcutta,

Dated the 24th December, 1988,

Calcutta.

Sd/-

Regional Manager.

Punjab National Bank,

Regional Office.

15 Park St., Calcutta-16.

MEMORANDUM OF SETTLEMENT ENTERED INTO
UNDER SECTION 18(1) OF THE INDUSTRIAL DIS-
PUTES ACT, 1947 AS AMENDED BETWEEN PUNJAB
NATIONAL BANK AND PNB EMPLOYEES UNION IN
THE MATTER OF SHRI KRISHNA PRASAD

PARTIES :

1. Regional Manager,
Punjab National Bank
Calcutta.

1. Sri T. P. Gorai,
General Secretary,
PNB Employees Union Calcutta,
West Bengal.

SHORT RECITAL OF THE CASE

Sri Krishna Prasad was working as Sweeper on daily wages at CMO : Brabourne Road, Calcutta. Punjab National Bank Employees Union raised an Industrial Dispute before the Assistant Labour Commissioner (Central), Calcutta demanding absorption of Sri Krishna Prasad and five other such Sweepers also working at other offices of the Bank in Calcutta, in Bank's service and that they be paid pro-rata scale of wages for the period they had worked earlier.

The conciliation proceedings ended in failure and subsequently the Ministry of Labour, Government of India, referred the case for adjudication to the Central Government Industrial Tribunal, Calcutta to submit its Award in accordance with Sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, vide their Order No. S-12011(15)/85-D. IV (A) dated 18th April, 1986, the Schedule being "Whether the action of the Management of Punjab National Bank, 15 Park Street, Calcutta 700016 in not paying the scale wages to temporary workmen as per list attached and also not absorbing them in Bank's service is justified. If not, to what relief are these workmen entitled?"

The Central Government Industrial Tribunal, Calcutta vide letter Ref. No. 38/86 dated 31st May, 1988 advised both parties to appear before the Hon'ble Tribunal and both parties were accordingly present and the Union filed their written statement.

Whereas the parties to the Dispute held further prolonged discussions in the meantime and finally agreed upon and arrived at a settlement mentioned below.

TERMS OF SETTLEMENT

Without prejudice to the stand taken by the Parties before the Assistant Labour Commissioner (Central), Calcutta and reference before the Central Government Industrial Tribunal, Calcutta it is agreed that :—

1. Sri Krishna Prasad will be appointed in the Bank as a Permanent Part-time Sweeper with immediate effect on half of scale wages at the starting of the scale applicable to Subordinate Staff.
2. The Bank shall issue Appointment Letter to Sri Krishna Prasad immediately after signing of this Settlement and he will be posted at a point of need within this Region.
3. Sri Krishna Prasad will be on probation for a period of six months from the date of appointment, on completion of which his notional seniority will be counted with effect from 1st July, 1987 with no monetary benefit in any form for the period prior to his date of appointment and he will be governed by all terms and conditions as applicable to permanent part-time Sweepers in subordinate cadre in the Bank.
4. The Union will withdraw the case under reference No. 38 of 1986 before the Central Government Industrial Tribunal by praying jointly with the Bank for a 'No Dispute' Award, explaining the factual position of other persons mentioned in the Schedule.
5. The Union or its members shall not raise any Industrial Dispute or any claim in any shape or form in view of the above Settlement before any authority or a court.
6. The Settlement has been entered into having regard to the peculiar circumstances and in the interest of

maintaining cordial industrial relations and it shall not be cited as precedent at any level/forum.

SIGNATURE OF THE PARTIES

Representing Employer :

Sd/-

(P. K. GUHA)

WITNESSES

Sd/-

1. (S. N. Nandy)

Manager (P),

Regional Office,

Calcutta

Sd/-

2. (M. Chatterjee)

Asstt. Manager (P)

Regional Office

Calcutta.

Representing Employees

Sd/-

(T. P. GHORAI)

Sd/-

1. (A. K. Aditya)

President,

P.N.B.E.U.,

West Bengal.

Sd/-

2. (S. Kumar)

Clerk-cum-Typist,

Regional Office,

Calcutta.

Dated : 28th July, 1988.

[No. L-12011/15/85-D. IV (A)]

नई दिल्ली, 10 फरवरी, 1989

का.प्र. 377—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इलाहाबाद बैंक के प्रबन्धकों के संबंध में नियोजकों और उनके कर्मचारियों के बीच, प्रमुख में निम्नलिखित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नं. 2, धनबाद, के फैसले को प्रकाशित करती है, जो केन्द्रीय सरकार को 31-1-89 को प्राप्त हुआ था।

New Delhi, the 10th February, 1989

S.O. 377.—In pursuance of section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, No. 2, Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the Allahabad Bank and their workmen, which was received by the Central Government on the 31st January, 1989.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

Reference No. 37 of 1988

In the matter of an industrial dispute under Section 10(1)(d) of the I.D. Act, 1947

PARTIES :

Employers in relation to the management of Allahabad Bank,

AND

Their workmen.

APPEARANCES :

On behalf of the workmen—Shri S. K. Tewary, President, Bihar State Allahabad Bank Employees' Union.

On behalf of the employers—Shri Shrikant, Law Officer.

STATE : Bihar.

INDUSTRY : Banking.

Dhanbad, the 23rd January, 1988.

AWARD

The Government of India, Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-12012/283/87-D.II(A), dated, the 12th February, 1989.

SCHEDULE

"Whether the action of the Allahabad Bank in not holding test/interview since June, 1985 and thus denying opportunity to Shri B. N. Prasad, Thakur, Ex. Peon-cum-Farash of Patna Office of the Bank for regular employment in the Bank service is just? If not, to what relief the workman is entitled?"

The case of the union, namely Bihar State Allahabad employees union is that the concerned workman Shri B. N. Prasad Thakur was appointed as a Peon-cum-Farash on 8th December, 1979 in Khudaganj branch of the Allahabad Bank. He worked in the Bank from 9th January, 1980 to 6th May, 1980 and was posted at different branches by the Bank. The concerned workman had completed 109 days of work in the Bank with effect from 6th May, 1980. Thereafter the concerned workman was retrenched by the Bank on the ground that his services were no more required in the Bank. The management did not issue any letter of dismissal to the concerned workman. Thereafter the union took up the matter of the concerned workman and 2 others and filed a Writ petition before the Patna High Court which was numbered as C.W.J.C. No. 2780/80. The said Writ Petition was dismissed by the Hon'ble High Court on 24th November, 1982 with a direction to the Bank to give opportunity and preference to the concerned workman and 2 others in the matter of their future employment in accordance with the Section 25H of the I.D. Act.

The concerned workman learnt in the month of December, 1984 that the Bank has given regular employment to new persons flouting the direction of the Hon'ble High Court and also violating the statutory mandatory provision of Section 25H of the I.D. Act. He also learnt that the two other persons who were petitions along with the concerned workman in CWJ.C. 2780/80 were given employment by the Bank. The Bank discriminated in the case of the concerned workman by not giving him employment. The concerned workman represented before the Bank but he did not get justice from the management of the Bank. Then he filed contempt petition before the Hon'ble High Court against the officers of the Bank for violation of the direction of the Hon'ble Court passed in CWJ.C. 2780/80. A counter affidavit was filed by the Bank in the said contempt matter giving undertaking that the post of Peon-cum-Farash was going to be advertised and the concerned workman will be given preference as per pro-

vision of Section 25H of the I.D. Act and also in accordance with the earlier direction of the Hon'ble High Court dated 24th November, 1982. On the said undertaking given by the Bank the Hon'ble Court directed the concerned workman to withdraw the contempt petition with liberty to file a fresh Writ application. Thereafter the concerned workman approached the union and thereafter the union filed fresh Writ petition before the Hon'ble High Court which was numbered as CWJ.C. No. 3195/85. The said Writ application was dismissed on 12th February, 1985. Thereafter the union approached the Hon'ble Supreme Court against the order of dismissal of his Writ application by the Hon'ble High Court and the said application was registered as SLP(C) No. 14996 of 1985 by the Supreme Court. As an eye wash the management of the Bank issued letter dated 27th June, 1985 to the concerned workman calling upon him to file an application in the prescribed form for appointment in the post of Peon-cum-Farash which had been advertised by the management. After hearing the parties the Hon'ble Supreme Court vide its order dated 24th February, 1986 in SLP No. 14996/85 directed that the Bank in terms of its letter dated 27th June, 1985 will allow an opportunity to the concerned workman to appear at the next test to be held by the Bank and the concerned workman should approach the Bank for this purpose. The Hon'ble Supreme Court in its order further observed that the remaining 2 petitioners had already been given employment in terms of the settlement dated 13th May, 1982. As per direction of the Hon'ble Supreme Court dated 24th February, 1986 the concerned workman filed the application form, etc. and submitted it to the Bank on 15th March, 1986. Although there were hundreds of vacancies for the post of permanent Peon-cum-Farash in the Bank, it did not take any positive step to fill up those vacancies and were appointing persons on casual basis and thus the Bank was vindictive against the concerned workman and was not giving employment to him and was flouting the direction of the Hon'ble Supreme Court. The dismissal of the concerned workman and subsequent denial of opportunity for his employment by not holding the test/interview since June, 1985 for regular employment in the Bank service was mala fide. One A. K. Rajak who was engaged in the Bank on similar circumstances on 26th July, 1979 had been given regular appointment by the Bank whereas the concerned workman who was appointed prior to Ashok Kumar Rajak has been denied such opportunity. The denial of the preference and opportunity of re-employment to the concerned workman is unjustified and mala fide. On the above facts it is prayed that it may be held that the action of the Allahabad Bank in holding the test since June, 1985 and thus denying opportunity to the concerned workman for regular employment in the Bank's services is unjustified and that he is entitled for reinstatement with full back wages.

The case of the management is that Allahabad Bank is a Nationalised Bank having its head office at Calcutta and Zonal Office at Patna. The matter in respect of the concerned workman was raised by the union before the Hon'ble Supreme Court of India in SLP No. 14996/85 wherein their Lordship of the Supreme Court while dismissing the SLP petition observed that the Bank in terms of its letter dated 27th June, 1985 will allow opportunity to the concerned workman to appear at the test to be held by the Bank and that the concerned workman should approach the Bank for the purpose. It further observed that the two other petitions had already been given employment in terms of the settlement dated 13th May, 1982. Thereafter the concerned workman who was a party in the SLP petition was called to appear in the written test for the purpose of qualifying the same. Earlier the concerned workman along with 2 others had filed a Writ petition No. 2780/80 before the Hon'ble High Court of Patna challenging the termination of their services and the circular dated 22nd September, 1980. The Hon'ble High Court dismissed the Writ petition vide order dated 29th November, 1982 with an observation that an opportunity under Section 25H of the I.D. Act should be given to the concerned workman and 2 others.

A memorandum of settlement had been arrived at under Section 18 of the I.D. Act and Rule 58 Industrial Disputes (Central rules) between the representative of the All India Allahabad Bank employees coordination committee representing all Award Staff categories employees of the Bank and

the management. The said settlement was on the issue of absorption in the permanent employment of employees who had worked in the subordinate and non-subordinate cadre of the Bank. The said agreement was signed on 13th May, 1982 and it was arrived at the intervention of the RLC(C). Under the terms of settlement the temporary employees in the subordinate and non-subordinate cadre who had worked for 240 days within the period from 1st January, 1970 to 30th April, 1982 in 12 calendar months or worked for 600 days in total were given opportunity to apply within 60 days and if found eligible as per terms of settlement and were medically fit were to be appointed in permanent service of the Bank. It was also provided that if the management fails to appoint the eligible employees who have applied in terms of the settlement within the period stipulated then the applicants shall be deemed to have appointed on permanent basis after expiry of 6 months from the date of signing of the agreement. The concerned workman Shri B. N. P. Thakur was not found eligible under this settlement arrived at by the union and the representative of the All India Allahabad Bank co-ordination committee yet has been asked to appear in the written test. The concerned workman has been given an opportunity to re-employment and has been asked to appear in the test as per the observation of the Hon'ble High Court in its judgement dated 24th November, 1982 vide letter of the management dated 27th June, 1985. The intention of the Bank is to appoint staff on permanent basis and not to keep them on temporary basis accordingly circulars were issued and regular and permanent employment is made through proper channel and procedure. The concerned workman will be given an opportunity to appear in the test which was to be held in 1988 for the recruitment of Peon-cum-Farash. On the above facts it is prayed on behalf of the management that it may be held that the action of the Allahabad Bank in not holding the test is due to the fact that the Bank had not at all undertaken the recruitment of Peon-cum-Farash for the past couple of years since it had no recruitment plan and as such there is no denial of opportunity to the concerned workman and the concerned workman is not entitled to any relief.

The point for decision are (1) whether the Allahabad Bank is justified in not holding the test/interview since June, 1985 and (2) whether the management Bank is justified in denying opportunity to the concerned workman for regular employment in the Bank's service.

The management examined one witness in support of their case. The union did not examine any witness. However, the documents of the union have been marked Ext. W-1 to W-7 on admission and the documents of the management have been marked Ext. M-1 to M-7.

Most of the facts are not disputed. The fact that the concerned workman worked in Allahabad Bank as Peon-cum-Farash from 9th January, 1980 to 6th May, 1980 is not disputed by the management. It is thus clear that the concerned workman had worked for about 109 days as is stated in para-2 of the W.S. of the workman and the said fact is not controverted. It is clear therefore that the concerned workman was retrenched from service of the Bank and that he had completed more than 90 days of service. It is also not disputed that the concerned workman along with 2 others had filed CWJC No. 2780/80 in the Hon'ble Patna High Court and the same was dismissed on 24th November, 1982 with a direction to the Bank that the concerned workman and 2 others should be given opportunity and preference in the matter of further employment under Section 25H of the I.D. Act. The management of the Bank did not consider the case of the concerned workman under Section 25H of the I.D. Act. till prior to 1985. It appears that the two other persons who were petitioners along with the concerned workman in CWJC No. 2780 of 1980 were given appointment by the Bank. It appears from the W.S. of the Bank that those two persons were given employment as per memorandum of settlement dated 13th May, 1982 and that as the concerned workman was not found eligible under the said settlement he was not given employment. On perusal of para-VI of the W.S. of the management it appears that under the terms of settlement the temporary employees in the subordinate cadre who had worked for 240 days within the period 1st January,

1970 to 30th April, 1982 in 12 calendar months or worked for 600 days in total were given opportunity to apply within 60 days and if found eligible as per terms of settlement and medically fit were to be appointed in permanent service of the Bank. Admittedly the concerned workman had completed only 109 days of attendance in the Bank as Peon-cum-Farash from 9th January, 1980 to 6th May, 1980 and as such the case of the concerned workman was not covered by the said settlement dated 13th May, 1982. It appears that the two other persons who had filed the Writ petition along with the concerned workman in CWJC 2780/80 were fulfilling the terms of settlement and as such they were provided with the employment by the management. The concerned workman therefore cannot claim to get employment on the basis of the appointment of the two other persons in the Bank as his case stood on different footing from those two persons who were complying with the terms of settlement for their regular appointment in the Bank.

However, it is admitted that the Hon'ble court in CWJC No. 2780/80 while dismissing the Writ Petitions had directed the management of the Bank to give opportunity to preference to the concerned workman in the matter of future employment in accordance with Section 25H of the I.D. Act. The management failed to comply the said direction of the Hon'ble High Court and it is alleged that the Bank was giving appointment to new persons. The union of the concerned workman filed a contempt petition before the Hon'ble Supreme Court for violation of the direction of the Hon'ble Court dated 24th November, 1982 in which the Bank gave an undertaking that the post of Peon-cum-Farash was going to be advertised in which the concerned workman will be given preference as per the provision of Section 25H of the I.D. Act and also in accordance with the earlier direction of the Hon'ble Supreme Court dated 24th November, 1982. It appears that when the concerned workman was not given preference under Section 25H of the I.D. Act his union filed a fresh Writ application C.W.C. No. 3195 of 1985 before the Hon'ble High Court and the said writ application was dismissed on 12th February, 1985. Ext. M-2 is the order of the Hon'ble Supreme Court dated 24th February, 1986 in SLP No. 14996 of 1985 arising out of the order passed by the Hon'ble High Court in CWJC No. 3195/85. It will appear from the order of the Supreme Court in Ext. M-2 that while dismissing the leave petition their Lordships made an observation that the Bank in terms of its letter dated 27th June, 1985 will allow an opportunity to the concerned workman to appear at the next test to be held by the Bank and that the concerned workman should approach the Bank for this purpose. This order is a settler on the point that the management of the Bank had been directed to give opportunity to the concerned workman to appear at the test to be held by the Bank. Further it will appear from Ext. W-5 which is the order dated 4th January, 1988 passed by their Lordship of the Supreme Court in SLP No. 13483 of 1987 in which it was ordered that the management has to comply with the provision of Section 25H of the I.D. Act and that their Lordships do not see reason to interfere with the judgement of the High Court which was earlier passed. Ext. W-1 is an order dated 20th August, 1988 passed in the Writ petition by the Hon'ble Patna High Court which shows that the union had filed the said Writ petition on behalf of the concerned workman with grievance that the Bank was going to make appointment against Class IV posts without considering the case of retrenched employees in accordance with Section 25H of the I.D. Act. Their Lordship after hearing the parties ordered that it will be open to the Bank to consider the question of appointment to the vacant post in question complying with the provision of Section 25H of the I.D. Act. Thereafter the management vide Ext. W-7 dated 27th June, 1985 issued circular to all its Regional Managers and Branch Managers in Bihar Zone notifying the recruitment of Peon-cum-Farash through written test. The management of the Bank vide Ext. M-6 dated 27th June, 1985 also issued a specific letter to the concerned workman by Registered post with A/D sending him an application form asking him to fill up and send it to the Bank complying with the necessities stated in it. It will thus appear that Ext. M-7 was general circular which was sent by the Bank Manager to all the Regional Manager and Branch Manager and that Ext. M-6 of the same date as a letter specifically sent to the

concerned workman regarding the appointment of the Peon-cum-Farash in fulfilment of the Writ petition No. CWIC No. 2780-80 as is stated in the subject of the letter Ext. M-6. The concerned workman in compliance with Ext. M-6 sent his application form for the post of Peon-cum-Farash on 15th March, 1986 and its photo copy is Ext. W-3. The photo copy bears the stamp of Allahabad Bank Zonal Office, Patna, to show that the original of this application was received by the Bank from the concerned workman. In spite of the fact that the concerned workman had applied for the post of Peon-cum-Farash on 15th March, 1986 the management of the Bank took no further step for appointment and filling of the post which were advertised by them. From the facts and evidence it appears that although there was vacancy in the Bank and they had advertised for the post of Peon-cum-Farash in 1985 they did not take further step for filling up the further vacancies.

The management of the Bank vide letter Ext. M-3 dated 24th June, 1988 addressed to the concerned workman notified that recruitment of Peon-cum-Farash through written test and interview will take place for preparing a panel of approved candidates to fill up vacancies. It also stated that as the concerned workman had worked on temporary/casual basis in the Bank in the post he was being afforded opportunity to appear in the written test and interview in the forthcoming recruitment process for the post of Peon-cum-Farash. The management asked the concerned workman to fill up the enclosed form and send it to the management after complying the formalities by 30th July, 1988. It appears from the case of the management itself that the original of the letter Ext. M-3 dated 24th June, 1988 sent to the concerned workman through Registered post could not be delivered. The management has filed the photo copy of envelope Ext. M-5 to show that the said Registered letter was not served on the concerned workman with a note "Not known". However, it was submitted before me by Shri Shrikant, Law Officer appearing for the management that the letter dated 24th June, 1988 sent to the concerned workman could not be delivered to the concerned workman although the management tried to inform him of the ensuing test for the post of Peon-cum-Farash and as such the representative of the union may be asked to receive a copy of the said letter dated 24th June, 1988 and Shri Tewary appearing for the union took the said letter so that the concerned workman may apply for the post of Peon-cum-Farash in accordance with Ext. W-3.

Admittedly no test has yet been held in respect of the post of Peon-cum-Farash by the Bank although the earliest order was passed by the Hon'ble Patna High Court on 24th November, 1982 in which the management had been directed to give opportunity and preference to the concerned workman in the matter of future employment in accordance with Section 25H of the I.D. Act. In my opinion it appears that the management has been delaying in compliance with the direction of the Hon'ble High Court in which they were directed to give opportunity and preference to the concerned workman in the matter of future employment in accordance with Section 25H of the I.D. Act. Thus the action of the Bank in not holding the test since June, 1985 has denied opportunity to the concerned workman for regular employment in the Bank service as Peon-cum-Farash.

The question now is as to what remedy can be provided to the concerned workman. The direction of the Hon'ble Patna High Court and Supreme Court is to the effect that the concerned workman should be given opportunity and preference in the future employment in accordance with Section 25H of the I.D. Act.

Section 25H of the I.D. Act provides that where any workmen are retrenched, and the employer propose to take into its employment any person, he shall, in such manner as may be prescribed, give opportunity to their retrenched workman to offer themselves after re-employment and as such retrenched workmen should offer themselves for re-employment shall have preference over other persons. The order of the Hon'ble Court is confined to Section 25H of the I.D. Act and from the facts of the case it also appears that the concerned workman is only entitled to the preference

which is provided under Section 25H of the I.D. Act. The union is demanding that the concerned workman should be reinstated in the job with full back wages. I think the grant of this prayer is beyond the scope of Section 25H of the I.D. Act not the concerned workman has to appear in the test in which the management will give the preference as is required under Section 25H of the I.D. Act. However, as it appears that although in June, 1985 the Bank had taken step for recruitment of Peon-cum-Farash in accordance with the direction of the Hon'ble Court it did not hold test so long and thus the concerned workman has been deprived of the opportunity of appearing in the test for a period of more than 4 years as such I think that the management should now hold the test at the earliest after giving opportunity to the concerned workman to appear in the said test and to give him preference as is required under Section 25H of the I.D. Act. However, since the management has delayed in holding the test the concerned workman if selected should be given his seniority in the post of Peon-cum-Farash with effect from 27th June, 1985.

In view of the discussions made above I hold that the action of the Allahabad Bank in not holding the test/interview since June, 1985 and thus denying opportunity to the concerned workman Shri B. N. Prasad Thakur, ex-Peon-cum-Farash of Patna Office of the Bank for regular employment in the Banks service is not justified. The management is directed to hold the test if not already held, consider, the case of the concerned workman, should hold the test within 2 months of the publication of the Award in the Official gazette and the case of the concerned workman be given preference under Section 25H of the I.D. Act and should be given seniority as discussed above.

This is my Award.

I. N. SINHA, Presiding Officer
[No. L-12012/283/87-D.II(A)]

का.सा. 378.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक ऑफ बड़ोदा के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निविष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, मद्रास के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-1-89 प्राप्त हुआ था।

S. O. 378.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Madras as shown in the Annexure in the industrial dispute between the employers in relation to the Bank of Baroda and their workmen which was received by the Central Government on 30-1-1989.

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL,
TAMILNADU, MADRAS.

Wednesday, the 7th day of December, 1988

Industrial Dispute No. 15 of 1986.

(In the matter of the dispute for adjudication under Section 10(1)(d) of the Industrial Disputes Act 1947 between the workmen and the Management of Bank of Baroda (T.N.T.) Madras-18.)

BETWEEN

The Workmen represented by
The General Secretary,
Bank of Baroda Employees Union
31, Moore St. Madras-1.

AND

The Regional Manager,
Bank of Baroda (T.N.T.)
90, CR. Ramasamy Road, Alwarpet,
Madras, 18.

REFERENCE :

Order No. L-12011/50/85-D. II(A), dated 14-2-1986 of the Ministry of Labour, Government of India, New Delhi.

This dispute coming on for final hearing on Friday the 23rd day of September, 1988 upon perusing the reference claims and counter statement and all other material papers on record and upon hearing the arguments of Thiru I. Hariparanthaman Advocate appearing for the workmen and of Thiru B. Jayaraman, Advocate for the Management and this dispute having stood over till this day for consideration, this tribunal made the following.

AWARD

This dispute between the workmen and the Management of Bank of Baroda, Madras-18, arises out of a reference under Section 10(1)(d) of the Industrial Disputes Act, 1947 by the Government of India, in its order No. L-12011/50/85-D. II(A), dated 14-2-1986 of the Ministry of Labour, for adjudication of the following issue :

"Whether the action of the management of Bank of Baroda, Regional Office, Tamilnadu-1, Madras in charging interest on the drought loan granted in May, 1983 to the staff members working at Pondicherry Branch of the Bank is justified? If not to what relief the workmen are entitled to?"

The averments in the claim statement filed by the petitioner Union are that Pondicherry Government since declared the area as draught affected area in 1983, interest free drought loan was advanced to persons employed in the Pondicherry Branch of the Respondent's Bank in May, 1983. While granting the loans, necessary documents were signed by the employees and that it was made clear in the documents that the drought loan was an interest free loan and the terms and conditions stipulated in those documents referred to no interest would be charged on the drought loan. The Petitioner-Union further states that contrary to the terms and conditions stipulated in the loan documents, subsequently in September, 1983 the Management stated that interest at the rate of 11.4 per cent would be charged on the loan amount. The Petitioner-Union held talks with the Management and persuaded them not to charge the interest contrary to the assurance made before the advancement of the loan. Since the Management refused to change its stand, the Petitioner-Union moved the Assistant Labour Commissioner, Madras in June, 1984 Conciliation efforts made by the Assistant Labour Commissioner ended in failure because of the unhelpful attitude of the management resulting in the present reference. The Petitioner-Union states that having announced that there would be no interest charged on the drought loan and that having executed document providing no interest, the management is estopped from charging interest-free drought loan. The Management is not correct in denying interest free-loan to employees numbering 20 in Pondicherry branch whereas the management granted interest free loan in Tamilnadu. Hence there should not be discrimination in grant of drought loan. The other nationalised banks in Pondicherry have granted interest-free drought loan to its employees in the year 1983. The management grants loan on various loans with lesser interest and therefore it is not justified in charging interest at the rate of 11.4 per cent in drought loan. Hence the action of the Management of charging interest to the drought loan is not justified.

The Respondent-Management in its counter statement stated that the reference does not relate to either the conditions of employment or terms of employment to the workmen and hence it is bad in law. The facility of drought loan is not one of the terms agreed to by the Bipartite Settlement entered into between the Bank employees and the Bank. Most of the Nationalised Banks and Scheduled Banks in Pondicherry state have not even extended this benefit. The drought loan was extended to the employees only on compassionate grounds on interest and can never be called a term or condition of employment. The Tamilnadu Government granted loan to government servants for digging of wells and sinking of tubewells or installation of electric

pumpset to overcome difficult water conditions. Since the employees of the bank also made several representations for sanction of similar facilities the matter was taken up at the Indian Bank Association level and then it was as decided as a special case to grant interest-free loan to the employees of the Bank in Tamilnadu since the Government of Tamilnadu had granted advance to their employees. Subsequently that benefit was extended to Pondicherry branch also. The branches at Pondicherry were advised to charge interest at the rate of 11.4 per cent as per guidelines laid down by the Indian Bank Association. All the award staff were charged interest as per the instruction of the Bank. The only facility extended to the employees at the discretion of the Bank and the workmen have no right either to the loan nor to claim for waiver of interest. It is incorrect to state that the Respondent Bank granted interest-free drought loan to the employees at Pondicherry in May, 1983. The averments of the Petitioner that the documents in respect of the drought loan also disclose the fact that the drought loan is an interest-free loan is without any substance. The respondent never intended to advance loans and that too without interest. There is no discrimination in grant of drought loan and was extended purely on compassionate grounds and that too beyond the control of the Indian Bank's Association. It is also incorrect to state that other nationalised banks in Pondicherry had granted interest-free drought loan. As regards other kinds of loans referred to in para 8 of the claims statement of the petitioner-union that they do form part of the terms of the Bipartite settlement, as regards drought loan it is not a condition of service at the time of employment. Hence the claim petition may be dismissed.

The point for consideration is whether the action of the management bank in charging interest on drought loan granted in May, 1983 to the staff member working at Pondicherry branch of the bank is justified, if not to what relief the workmen are entitled to.

On the side of the petitioner union Ex. W-1 to W-7 and of behalf of the respondent bank Exs. M-1 to M-3 were marked by consent.

The bone of contention in this case only relates to whether charging of interest for drought loan granted to the employee of the respondent bank at Pondicherry is justified. In this connection, the case of the Petitioner-Union is that there was understanding that no interest would be charged and it is also covered by the documents executed by the workmen with the management. Of course, the learned counsel for the petitioner union contended that similar drought loans have been granted by other Nationalised Banks to its employees in Pondicherry but was denied by the Respondent-Bank. In this connection, the respondent produced Exs. M-3. Ex. M-1 the letter dated 24-11-1984 by the Chief Manager of Central Bank of India to the Regional Manager of the respondent bank stating that drought loan to the employees of their bank in Union territory of Pondicherry was not allowed as per policy of the Indian Banks' Association. Ex. M-2 is also a similar letter from Canara Bank addressed to the respondent bank that they have not permitted the Pondicherry branch to grant drought relief loan to the employees working there. Ex. M-3 is another letter dated 8-12-84 by Union Bank of India to the Respondent-Bank that initially they sanctioned interest-free drought loan to their employees in Pondicherry and Tamilnadu and subsequently on the basis of Indian Banks' Association that there was no case for grant of interest-free loan in Pondicherry, they also charged commercial rate of interest. As against this documentary evidence, the petitioner-union is not able to substantiate that other Nationalised Banks or Scheduled Banks have also advanced interest-free drought loan. However, it is contended by them that in view of the specific understanding, the management would not collect interest that they are not justified now in claiming interest. Of course, the Petitioner-Union has not produced the necessary documents executed by them to show interest was charged for the reason that these documents are not available with them and they are with the Management. The Respondent-Management though denied that the document executed by the workmen of the union would show no interest has been charged, it is evident from Ex. W-3, the remarks filed by the Regional Manager, Bank of Baroda, Madras to the dispute before the Assistant Labour Commissioner that he has categorically

stated that drought loans were granted to the employees affected by drought at Pondicherry by way of extending the facility given to Tamilnadu employees of the Respondent-Bank. However, it has been stated there the above facility of drought loan was extended by mistake and it was brought to the light of the higher authorities, the branch was advised to charge interest at 11.4 per cent since the interest-free loans to staff members at Pondicherry were granted beyond the Indian Banks' Association guidelines. This reference in Ex. W-3 would show that initially while granting the loans and obtaining documents from the employees the intention was that no interest should be charged. Otherwise, the Respondent-Management could have taken a specific plea that the very documents executed by the Petitioner-Union would itself show the charge of interest. The fact remains that it is not seriously disputed that only subsequently interest was charged at 11.4 per cent to the drought loans on the basis of Indian Bank's Association guidelines. Any way this charging of interest subsequently may not be proper for the reason that at no time before granting of loan or at the time of execution of the documents by the employees they were not posted with the information that they are liable to pay interest. There is also no indication at any stage that they may at a later stage have to pay interest. In other words, the drought loan was not granted subject to any condition regarding payment of interest. The workmen who availed the facility of drought loan cannot be taken by surprise at a later stage to pay interest since Indian Bank's Association did not approve the Policy. Therefore the charging of interest is not justified.

The learned counsel for the respondent also praised a contention that the reference does not relate to conditions of employment of the workmen and therefore it is bad in law. In this connection, reliance was made on the decision reported in 1975 11 LLJ Page 445 (Automatic Electric Private Ltd. Vs. Engineering Mazdoor Sabha and others) therein it has been held :—

"If the industrial dispute relates to the enforcement of a right or an obligation created under the Act, then the only remedy available to the employee is to get an adjudication under the Act. If the dispute is not an industrial dispute, nor does it relate to enforcement of any other right under the Act, the remedy lies only in the Civil Court".

There cannot be any quarrel over the law laid down on this position in the above decision.

In 1983 1 LLJ Page 435 (The Management, Southern Textiles Limited, Coimbatore Vs. The United Textiles Labour Association and others) the question arose whether the demand of the workmen of a textile mills that a ratio should be fixed between the heirs or dependents of workmen and outsiders in the matter of recruitment for employment in the mill as a condition of the terms of their employment. Out High Court held that the demand resulted in an industrial dispute which was referred for adjudication by the Government and the reference was challenged by the Management inter alia on the ground that what was referred is not an industrial dispute. It is also seen in this case that the workmen have raised a dispute regarding charge of interest for drought loan and consequently it was referred by the Government to this Tribunal. The contention of the learned counsel, for the Respondent-Management is that the Tribunal has no jurisdiction and the remedy of the workmen is only to approach any other forum cannot be accepted since it is a dispute under Section 2(K) of the Industrial Disputes Act. Hence the contention of the Respondent-Management falls to the ground. Hence this point is found accordingly. The reference is answered in favour of the workmen.

In the result, an award is passed in favour of the workmen and the action of the Management of Bank of Baroda, Madras in charging the interest on drought loan granted in March 1983 to the staff members working at Pondicherry of the Bank is not justified and they are not entitled to pay any

interest on the drought loan. There will be no order as to costs.

Date, this 7th day of December, 1988.

THIRUK NATARAJAN, Industrial Tribunal
[No. L-12011/ 0/85-D. II (A)]
N. K. VERMA, Desk Officer

List of Witnesses and Exhibits in I D. 15/86.

Witnesses examined

For both sides—None.

Document Marked

For Workmen

Ex. W-1—8-6-83 Notification from Government of Pondicherry declaring that Pondicherry was drought affected areas—copy.

W-2—10-6-84 Dispute raised by Per-Union before Asstt. Labour Commissioner, Madras—copy.

W-3—12-7-84 Remarks filed by Regional Manager, Madras to the dispute before Asstt. Labour Commissioner—copy.

W-4—5-8-84 Rejoinder filed by the Petr-Union before ALC—copy.

W-5—6-3-85 Lr. from Asstt. General Manager, Bank of Baroda, Bombay to the A.L.C. stating that they are considering waiving of loan as done by other Nationalised Bank—copy.

W-6—Chapter XXIV of Personnel Manual 1985 published by the mgt. in its publication No. 137 about various loans—copy.

W-7—5-6-86 Circular regarding interest-free advance to employees for management (xerox copy).

Ex. M-1/24-11-84 Lr. from Central Bank, Madras to the management regarding charge of interest for drought loan sanctioned in 1983.

M-2—27-11-84 Lr. from Canara Bank to the mgt.—copy.

M-3—8/21-12-84 Lr. from Union Bank of India Madras to the mgt.—copy.

नई दिल्ली, 24 जनवरी, 1989

प्रमाणपत्र

सा. का. 379,—यह प्रमाणित किया जाता है कि खान अधिनियम, 1952 (1952 का 35) की धारा 82 द्वारा प्रबल शक्तियों का प्रयोग करते हुए केन्द्रिय सरकार ने निर्णय लिया है कि मध्य प्रदेश राज्य में होरापुर में वैदर्भ मध्य प्रदेश राज्य खनन निगम के ब्रह्म उक्त अधिनियम के अधीनस्थ खान है।

[सं. एन. 29013/1/88-खान -I]

बादल राय, सचिव

New Delhi, the 24th January, 1989

CERTIFICATE

S.O. 379.—This is to certify that in exercise of the powers conferred by section 82 of the Mines Act, 1952 (35 of 1952) the Central Government have decided that the crushers of M/s. Madhya Pradesh State Mining Corporation at Hirapur in the State of Madhya Pradesh, is a mine within the meaning of the said Act.

[No. S-29013/1/88-M. I]
BADAL ROY, Secy.

नई दिल्ली, 24 जनवरी, 1989

का. भा. 380.—खान अधिनियम, 1952 (1952 का 35) की धारा 5 की उप धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार श्री शम्भु पासवान, खान सुरक्षा उप निदेशक (मैकेनिकल) को अगले आदेशों तक मुख्य खान निरीक्षक के अधीन खान निरीक्षक नियुक्त करती है।

[का. सं. ए-12028/3/86-खान-1 प्राई. एम. एच./1]

भार. टी. पण्डे, उप सचिव

New Delhi, the 24th January, 1989

S.O. 380.—In exercise of the powers conferred under sub-section (1) of section 5 of the Mines Act, 1952 (35 of 1952), the Central Government hereby appoints Shri Shambhu Paswan, Deputy Director of Mines Safety (Mechanical) as Inspector of Mines, subordinate to the Chief Inspector of Mines, until further orders.

[F. No. A-12028/3/86-M.I/ISH-1]

R. T. PANDEY, Dy. Secy.

नई दिल्ली, 24 जनवरी, 1989

का. भा. 381.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, सैसर्स भारत कोकिंग कोल लिमिटेड का भासदेवपुर प्रोजेक्ट के प्रवर्धन से सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण (मं. 2) जनवाद के पंचाट को प्रकाशित करती है।

S.O. 381.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal (No. 2), Dhanbad as shown in the Annexure in the industrial dispute between the employers in relation to the Basudeopur Project of M/s. Bharat Coking Coal Ltd., and their workmen.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

Reference No. 277 of 1986

In the matter of an industrial dispute under Section 10(1)(d) of the I.D. Act, 1947

PARTIES :

Employers in relation to the management of Basudeopur Project of Bharat Coking Coal Ltd.

AND

Their Workmen.

APPEARANCES :

On behalf of the workmen—Shri B. K. Ghosh, Member, Executive Committee, Janta Mazdoor Sangh.

On behalf of the employers—Shri G. Prasad, Advocate.

STATE : Bihar.

INDUSTRY : Coal.

Dated, Dhanbad, the 2nd January, 1989.

AWARD

The Government of India, Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/109/86-D. III(A), dated, the 7th August, 1986.

SCHEDULE

"Whether the demand of Janta Mazdoor Sangh that the management of Basudeopur Project of Bharat Coking Coal Limited should fix (1) their workmen

shown in Annexure 'A' in a regular wage Board pay scale from the date of completion of the one year training as Dumper Operator (T) HEMN and (2) wages of other workmen shown in Annexure 'B' as Dumper Operators in Excavation grades 'C' and 'B' on par with those of similar other workmen is justified? If so, to what relief are the workmen concerned entitled?"

ANNEXURE 'A'

1. Shri R. N. Singh
2. Shri Amrik Singh
3. Shri Sakaldeo Singh.

ANNEXURE 'B'

1. Shri Ravindra Kumar Sharma
2. Shri Suresh Sharma
3. Shri Rama Shankar Pandey
4. Shri Santosh Chand
5. Shri Basant Singh
6. Shri Mobin Ahmed Khan.

The case of the workmen is that as per stipulation in terms of employment the three workmen named in Annexure 3 to the schedule of the order of reference were to be placed on regular Excavation Grade-E on completion of one year's training period as per policy of the management. Contrary to the above policy and normal practice, the management placed them in Excavation Grade-E with effect from 21st July, 1985. However, their seniority was admitted from the date of one year training period. The case in respect of the concerned workmen named in Annexure-B of the Schedule to the order of reference is that they were regularised as Dumper Operator in Excavation Grade-B as per office order dated 5th/7th October, 1983 with effect from 1st March, 1983 and gave them fitment @ Rs. 26.75 as per No. A-II which was in operation at the relevant time. Some other Dumper Operators at Alkusa Colliery of the same Area, namely, S/Shri Dinanath Prasad and Trilok Singh were regularised subsequently and were given the fitment @ Rs. 28.05 as basic although they were having the same basic pay in Grade-C with the concerned workmen, prior to regularisation in Excavation Grade-B. S/Shri M. D. Ali, Lal Parikha Prasad, Jaglal Giri and B. K. Chakravarti who had been regularised in Excavation Grade B with effect from 21st July, 1985 were placed at Higher basic in comparison to the concerned workmen. The management have acted discriminatory against the concerned workmen by placing the concerned workmen on comparatively lower basic. During the conciliation proceeding the management had admitted in their W.S. that there was disparity in the fitment but they failed to remove the disparity. The demand of the workmen for fixing the concerned workmen shown in Annexure A of the schedule on Excavation Grade-C from the date of completion of one year training from 5th March, 1984 is justified. The demand of the workmen for fitment of the concerned workmen shown in Annexure-B to the schedule of reference at par with those of similar workmen is also justified and as such an Award be passed accordingly.

The case of the management is that the Dumper Operators have been placed in Grade-C sub-grade-I and Grade-D sub-grade II for which a practical experience of 5 years and 2 years respectively is required. No Dumper operator has been placed in Grade-D. None of the concerned workmen possessed their requisite qualification for being placed in Grade-D. The concerned workmen of Annexure A to the schedule of reference were appointed as Operators (Trainee) in December, 1983 and were offered wages payable to them during the period of their training. After completion of one year of initial training their performance was observed and they were fixed in the appropriate scale of pay. Although they completed training on 1st January, 1985 they were not found suitable to be immediately fixed in the excavation cadre. They were later on placed as operator trainee in Excavation Grade-E with effect from 21st July, 1985 after the management was satisfied that they could be taken in Excavation Cadre. There is time bound promotion or vaxation and suit-

ability has got to be judged before promotion or fixation on a scale. The management on a further representation of the workman decided to place them in Grade-E immediately after completion of one year's training and they are to be given increments etc. with retrospective effect. In view of the fact that the management have conceded to the demand of the concerned workmen of Annexure A to the schedule of the reference the said demand has become infructuous and Award may be passed accordingly. The concerned workmen referred to in Annexure-B to the schedule of the order of reference were Dumper Operators and considering their merit, suitability and efficiency they were placed in excavation Grade-C and they cannot have any grievance. Under the Coal Wage Board Recommendation which has been adopted in NCWA-II and NCWA-III Dumper Operators have been placed in Grade B and C after 5 years and 2 years experience respectively and trainee operators have been placed in Grade-H for training atleast for 4 years in different jobs of Excavation equipment and machineries. By an Office order dated 5th/7th October, 1983 they were regularised in Grade-B. Shri Dinanath Prasad and Trilok Singh had been given one extra increment in Grade-C in view of their performance. S/Shri Md. Ali, Lal Pariksha Singh, Jaglal Giri and B. K. Chakravorty are auto electrician and fitter whose work differ from Dumper operator and as such they have been given a higher basic in comparison to the concerned workmen. On the above facts it has been submitted that the demand of the workmen is not justified and they are not entitled to any relief.

The dispute relating to the concerned workmen referred to in Annexure A has admittedly been resolved. The demand of the workmen in respect of the concerned workmen referred to in Annexure A was that they should be fixed in a regular wage board pay scale from the date of completion of their one year training as Dumper Operator. It will appear from the facts of the case that they joined services of BCCL as Dumper Operator trainee from 5th March, 1983 and according to the stipulation of the terms of employment they were to be placed on regular excavation grade-E, on completion of one year training period. The management, however contrary to the above policy placed them in excavation grade-E with effect from 21st July, 1985 which was much after the completion of one year of the training. Now, it is stated by the management in their rejoinder to the W.S. of the workmen that the management on further representation of the workmen decided to place them in Grade-E immediately after completion of one year training and they are to be given increment etc. with retrospective effect and thus the management have conceded to the demand of the workmen of Annexure A to the schedule of reference. It was submitted by both the parties before me that the demand of the workmen referred to in Annexure-A has been conceded by the management and as such there is no dispute in respect of the said item and as such no dispute Award in respect of their demand may be passed.

Now we take up the demand in respect of the concerned workmen of Annexure-B to the schedule of reference. Admittedly the concerned workmen of Annexure-B to the schedule of reference were regularised as Dumper Operator Ex. Grade-B vide Ext. W-6 dated 5th/7th October, 1983 with effect from 1st March, 1983 and they were given fitment @ Rs. 26.75 P as per NCWA-II which was in operation at the relevant time. Further NCWA-I came into operation from 1st January, 1983 with retrospective effect and there is no dispute that the concerned workmen were not fitted according to NCWA-III w.e.f. 1st January, 1983. It has also not been disputed by the workmen that their fitment @ Rs. 26.75P on their regularisation as Dumper Operator in Excavation Grade-B was incorrect or that the fitment should have been at a higher rate. The entire grievance of the workmen is that as S/Shri Dinanath Prasad and Trilok Singh who were regularised subsequently in Grade-B were given fitment @ Rs. 28.05 P, although they were having the same basic pay in Grade-C with the concerned workmen prior to the regularisation in Ex. Grade-B. Thus in case of the workmen demand that they ought to have been given fitment atleast at the basic of Rs. 28.05 P when they were regularised in Grade-B as Dumper Operator with effect from 1st March, 1983. Fitment in the revised scale of pay is given in Chapter IV of NCWA-II

which came into effect from 1st January, 1979 and in para 2.9 of NCWA-III. The formula of fitment in the revised scale of pay in NCWA-III is specifically given in details and it has not been stated by the workmen that their fitment was not made in accordance with the fitment in the revised scale of pay as provided in para 2.9 of NCWA-III.

On further examination of the details of the fitment in the revised scale of pay will show that the fitment may differ with the difference in the actual basic pay drawn by the workmen. There is no evidence before us to show as to what was the basic pay of S/Shri Dinanath Prasad and Trilok Singh when they were regularised in Grade-B. Admittedly Shri Dinanath Prasad and Trilok Singh who were also in Grade-C along with the concerned workmen were regularised in Grade-B subsequent to the regularisation of the concerned workmen in Grade-B. The date of regularisation of Shri Dinanath Prasad and Trilok Singh were given extra increment of the witnesses. The case of the management is that Dinanath Prasad and Trilok Singh were given extra increment in Grade-C in view of their performance. If Dinanath Prasad and Trilok Singh had been given one increment in Grade-C it is quite obvious that their fitment in Grade-B would be on a higher basic than the fitment of the basic wages of the concerned workmen. It may also be possible that Dinanath Prasad and Trilok Singh had received a further increment in Grade-C at the time they were regularised in Grade-B and that would also increase their basic at the time of fitment in Excavation Grade-B. Merely because Dinanath Prasad and Trilok Singh were placed at a higher basic in comparison to the concerned workmen will not entitle the concerned workmen for fitment to a higher basic specially when there is no case that the concerned workmen were wrongly fitted in the basic of Rs. 26.75 P. on their regularisation in Grade-B. The factors leading to the fitment of Shri Dinanath Prasad and Trilok Singh were different from the factors which were taken into consideration when the concerned workmen were fixed their basic on their regularisation to Grade-B. There is lack of evidence regarding the materials which were considered when the basic of Shri Dinanath Prasad and Trilok Singh was fixed on their regularisation in Grade-B and as such I do not think that the concerned workmen are entitled to the basic wages and the fitment at par with Dinanath Prasad and Trilok Singh.

In the result, I hold that the demand of the concerned workmen named in Annexure B to the schedule of the order of reference is not justified and as such they are entitled to no relief.

I further hold that as the demand of the concerned workmen named in Annexure-A to the schedule of the order of reference has been conceded by the management, there is no dispute about the same. The Award is passed accordingly.

I. N. SINHA, Presiding Officer
[No. I-20012/109/86-D.III(A)/TR (Coal-1)]

नई दिल्ली, 10 फरवरी, 1989

का. धा. 382—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अन्वये में, केन्द्रीय सरकार, भारत कोकिंग कोल लि. की बैस्ट ग्रेडीड कोलियरी के प्रबन्धन में सम्बन्धित नियोजकों और उनके कर्मचारियों के बीच, झुन्डवा में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-2, धनबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 31 जनवरी, 1988 को प्राप्त हुआ था।

New Delhi, the 10th February, 1989

S.O. 382.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the award of the Central Government Industrial Tribunal-2, Dhanbad as shown in the Annexure in the Industrial dispute between the employers in relation to the West Mudidih Colliery of M/s. Bharat Coking Coal Limited and their workmen, which was received by the Central Government on the 31st January, 1988.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL (NO. 2) AT DHANBAD

Reference No. 182 of 1986

In the matter of an industrial dispute under Section
10(1)(d) of the I.D. Act, 1947.

PARTIES :

Employers in relation to the management of West
Mudidih Colliery of Messrs. Bharat Coking Coal
Limited and their workmen.

APPEARANCES :

On behalf of the workmen—Shri S. N. Goswami,
Advocate.

On behalf of the employers—Shri B. Joshi, Advocate.

STATE : Bihar.

INDUSTRY : Coal.

Dated, Dhanbad, the 23rd January, 1989

AWARD

The Govt. of India, Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/369/85-D.III(A), dated, the 6th May, 1986.

SCHEDULE

"Whether the action of the management of West Mudidih Colliery of Katras Area No. IV of M/s. Bharat Coking Coal Limited, in not paying Category-V wages from 5-4-1984 and in reverting Shri Kedar Dusadh, Dumper Driver to the post of Dumper Khalasi with effect from 24-3-1985, is justified? If not, to what relief the workman is entitled?"

The case of the concerned workman Shri Kedar Dusadh is that he was a permanent employee of West Mudidih colliery of M/s. BCCL. He was designated as Dumper Khalasi. He was called for interview for the post of Driver before Interview committee on 7-2-84 and accordingly he appeared before the interview committee. On the recommendation of the D.P.C. the concerned workman along with other Dumper Khalasi were promoted to the post of Dumper Driver in Cat. V. The concerned workman was posted in West Mudidih colliery vide promotion order dated 5-4-84. Since 5-4-84 the concerned workman after joining as Dumper Driver continued to work as Dumper Driver. Out of the 40 Dumper Drivers promoted alongwith the concerned workman vide office order dated 5-4-84 all 29 of them except the concerned workman were placed in cat. V as Dumper Driver although the concerned workman was performing the duty of Dumper Driver. The management did not place the concerned workman in the pay scale of cat. V. The concerned workman thereafter raised the dispute regarding non-payment of the pay scale of cat. V. wages to him from 5-4-84 when the management did not concede to the request for placing him in cat. V wages as Dumper Driver. The ALC(C) started conciliation proceeding in which the management appeared and on failure of the conciliation the ALC(C) submitted the failure report to the Govt. of India, Ministry of Labour and thereafter the present reference was made to this Tribunal for adjudication. The concerned workman is still performing the job of Dumper Driver continuously since the date of his promotion. Due to unfair labour practice the management did not place him in cat. V nor paid him the wages of cat. V. The management did not revert the concerned workman from the post of Dumper Driver to the post of Dumper Khalasi w.e.f. 24-3-85. On the above facts it is prayed that the concerned workman should be placed in cat. V and the management be directed to pay him the pay scale of Cat. V. with effect from 5-4-84.

The case of the management is that the present reference is not legally maintainable as the present reference is arising out of an individual dispute and is beyond the jurisdiction of the Tribunal.

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The concerned workman was working as Miner/Loader at East Katras colliery. In 1979 when he obtained driving licence for light vehicle he was placed at the area office as Truck Khalasi on his request to give him an opportunity to learn the job of driving heavy vehicle. In 1980 the concerned workman was transferred to West Mudidih colliery as Dumper Khalasi. In the office order dated 5-4-1984 the concerned workman was included in the list of 40 Dumper Khalasi of the Area who were promoted to the post of Dumper Driver in Cat. V. The concerned workman was posted as Dumper Driver at the same place namely West Mudidih colliery where he was previously working as Dumper Khalasi. It was observed that the concerned workman was incapable of driving a dumper and was completely unfit to properly control the same. Hence the promotion order in respect of the concerned workman was not given effect to and he was allowed to continue as Dumper Khalasi and was given opportunity to take further training under the experienced Dumper drivers. It was brought to the notice of the Area Office vide letter dated 10-7-1984 that the concerned workman was incapable of driving the Dumper and whenever he was given chance to drive vehicle he caused major and minor accident and damaged the dumper. He was found to be totally unfit to exercise proper control of the dumper at the sidings and he caused the dumper to topple on the railway track below the platform in such a manner that luckily he and Shri Ramratan Roy the clerk riding on the Dumper by his side was safe. Vide letter dated 26-7-1984 the management intimated the concerned workman that he was practically incapable of driving Dumper and the management therefore did not implement the promotion order dated 5-4-1984 issued to him. After giving him opportunity for taking further training while continuing as Dumper Khalasi he was again put on trial. Finally it was observed that the concerned workman was unfit to be posted as Dumper Driver and he was issued with a letter dated 24-3-1984 keeping his promotion order in abeyance till such time he was found suitable to work as Dumper Driver. As the concerned workman was incapable of performing his duties as Dumper Driver he was not put as Dumper Driver and his promotion order cannot be implemented. On the above facts it is submitted on behalf of the management that the concerned workman is not entitled to get any relief from this Tribunal.

The points for decision are (1) whether the present reference is maintainable and this Tribunal has jurisdiction to decide the present reference which is arising out of an individual dispute (2) whether the concerned workman is entitled to be placed in Cat. V and to get wages of the scale of Cat. V w.e.f. 5-4-1984 and (3) whether the management was justified in reverting the concerned workman from the post of Dumper Driver to the post of Dumper Khalasi with effect from 20-3-1985.

The management examined witnesses and the concerned workman examined himself before this Tribunal. The documents of the management are marked Ext. M-1 to M-5 and the documents of the concerned workman are marked Ext. W-1 to W-5.

Point No. 1

The management has raised an objection regarding the jurisdiction of this Tribunal to decide individual dispute raised by the concerned workman in respect of non-placing him in Cat. V and not paying him the wages of Cat. V along with the question of his reversion from Dumper Driver to Dumper Khalasi. Admittedly this dispute has been raised by the concerned workman which is an individual dispute. The alleged dispute has not been raised by any union or group of workmen. On the above facts it is submitted on behalf of the management that the dispute referred to in the schedule to the order of reference is not an industrial dispute. The expression "Industrial dispute" is defined under Section 2(k) of the I. D. Act. The industrial dispute means any dispute or difference between the employers and employers, or between employers and workmen, or between workmen and workmen which is connected with the employment or non-employment or terms of employment or with the condition of labour, of any person. In keeping with the object and scope of the Act it has been held that the definition of industrial dispute include itself only collective dispute and not as an

individual dispute. An individual workman has got a very restricted right to move an Industrial court when his service condition has been changed to his prejudice during pendency of an industrial dispute or he has been dismissed or discharged during such pendency under Section 33-A of the Act. Further he has a right to recover certain dues from the employers under Section 33-Q of the I. D. Act. Subsequently by Act, 35 of 1965 Section 2(a) has been inserted in I. D. Act. The said amendment covers such a dispute regarding discharge, dismissal retrenchment and termination of service and brings them under the definition of Industrial disputes, even though they do not develop into collective dispute. The present dispute is not in respect of the discharge, dismissal retrenchment or otherwise termination of the service of the concerned workman and as such the concerned workman cannot raise an industrial dispute under Section 2A of the I. D. Act. As I have already stated above the definition of Industrial dispute in Section 2(k) of the I. D. Act does not cover the case of a dispute raised by an individual and as such it is clear that the present dispute raised by the concerned workman is not an industrial dispute and as such no such dispute can be referred to an Industrial Tribunal by the Government under Section 10 of the I. D. Act. The learned Advocate appearing on behalf of the concerned workman has referred three decision namely AIR 1984 Supreme Court page—1683, 1969 LIC page 1282 and 1977 FCR 139. None of these decision are relevant to the point in issue.

Point No. 2 and 3

In view of my finding made above I do not think it proper to discuss the case on merit as that would not serve any purpose to any of the parties. I therefore refrain to give a finding on the Point No. 2 & 3.

In view of the fact that this Industrial Tribunal has no jurisdiction to decide the dispute referred to in the schedule to the order of reference no Award is passed on Issue No. 2 & 3.

Award is passed accordingly.

I. N. SINHA, Presiding Officer.

[No. L-26012/369/85-D. III (A)/IR/(Coal-I)]

K. J. DYVA PRASAD, Desk Officer,

नई दिल्ली, 27 जनवरी, 1989

का. प्रा. 383—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार हंगकांग एवं शंघाई बैंकिंग कारपोरेशन कलकत्ता के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कलकत्ता पंचपट को प्रकाशित करती है।

New Delhi, the 27th January, 1989

S.O. 383.—In pursuance of section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Calcutta as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Hongkong & Shanghai Banking Corporation and their workmen.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, CALCUTTA

Reference No. 30 of 1986

PARTIES:

Employers in relation to the management of Hongkong & Shanghai Banking Corporation

AND

Their workmen.

APPEARANCES:

On behalf of Employer—None.

On behalf of Workmen—None.

STATE : West Bengal.

INDUSTRY : Banking.

AWARD

By Order No. L-12011/5/85-D.IV(A) dated 17-3-1986, the Government of India, in the Ministry of Labour, referred the following dispute to this Tribunal for adjudication:

"Whether the action of the management of Hongkong & Shanghai Banking Corporation, Calcutta in not absorbing workers numbered 20 who are engaged in sweeping and cleaning jobs, on regular basis and also in not paying the wages commensurate with the nature of job is justified? If not, to what relief are the workmen concerned entitled?"

2. The case is called out. Nobody appears on behalf of the Union as well as management inspite of the service of notices upon both the management and union by registered post. It appears from the record that on previous occasion also none appeared on behalf of union inspite of service of notice upon the union.

3. In the circumstances, it appears that the union or the workmen concerned are not interested to proceed with the case and in such a case I have no other alternative but to pass a 'No Dispute Award' and accordingly I do so.

This is my Award.

Dated, the Calcutta,

The 4th October, 1986.

SUKUMAR CHAKRAVARTY, Presiding Officer
[No. L-12011/5/85 D. IV(A)]

नई दिल्ली, 31 जनवरी, 1989

का. प्रा. 384—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार न्यू इंडिया एश्योरेंस कम्पनी लि. के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पंचपट को प्रकाशित करती है।

New Delhi, the 31st January, 1989

S. O. 384.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal Kanpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of New India Assurance Co. Ltd., and the workmen.

ANNEXURE

BEFORE SHRI ARIAN DEV PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
KANPUR.

I. D. No. 135 of 1986.

In the matter of dispute between :

Shri Ashok Kumar Gupta S/o. Shri Surendra Kumar Gupta B-111 New Agra,

Agra.

AND

The Divisional Manager New India Assurance Company
Limited Divisional Office Sanjay Palace Agra.

AWARD

1. The Central Government, Ministry of Labour, vide its notification No. 17012/4/86-D. IV(A), dated 4-12-1986 has

referred the following dispute for adjudication to this Tribunal :—

Whether the action of the management of New India Assurance Company Limited in terminating the services of Shri Ashok Kumar Gupta as Probationary Inspector vide their letter dated 17-8-1984 is legal and justified? If not to what relief he is entitled to?

2. The present case was fixed for 5-10-1988 at camp Lucknow, for cross examination of the workman. Prior to it when the case was put up on 31-8-1988 for his cross examination, an application was received by post for seeking adjournment on medical certificate alongwith certificate of the Doctor. The said application was allowed and the case was adjourned to 5-10-1988.

3. On 5-10-1988, Sardar Amreek Singh, authorised representative for the management appeared but neither the workman nor any one else could appear on that date i.e. 5-10-88, on which date cross examination of the workman was to be conducted.

4. It thus appears that neither the workman nor his authorised representative is interested to prosecute the case. As such a no claim award is given in this case.

5. Reference is answered accordingly.

ARJAN DEV, Presiding Officer.

[No. I-17012/1/86-D. IV A.D.I.B.]

नई दिल्ली, 1 फरवरी, 1989

का. धा. 385.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मंगल ग्रामीण बैंक के प्रबन्धन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नम्बर 1 धनबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को प्राप्त हुआ था।

New Delhi, the 1st February, 1989

S.O. 385.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal Dhanbad, as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Magadh Gramin Bank and their workmen.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

Reference No. 194 of 1987

In the matter of an industrial dispute under Section 10(1)(d) of the I. D. Act, 1947

PARTIES :

Employers in relation to the management of Magadh Gramin Bank and their workmen.

APPEARANCES :

On behalf of the workmen—None.

On behalf of the employers—Shri U. K. Sharma, Advocate.

STATE : Bihar

INDUSTRY : Banking

Dated, Dhanbad, the 11th July, 1988

AWARD

The Government of India, Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the I. D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-12012/10/86-D.II (A), dated, the 11th May, 1987.

SCHEDULE

"Whether the action of the management of Magadh Gramin Bank Gulni, P.O. Gulni, Dist. Nawadha in terminating the services of Shri Lalo Pandey Part Time Sweeper w.e.f. 2-3-85 is justified? If not, to what relief is the concerned workman entitled?"

In spite of the fact that the notification regarding this reference was made on 11-5-87, the concerned workman did not file his W.S. The case was adjourned for several dates awaiting W.S. of the concerned workman. When no W.S. was received a registered notice was given to the concerned workman by his village address given in the order of reference. The concerned workman in response to the said notice appeared on 1-3-88 and noted the next date adjourned for filing his W.S. Since then the concerned workman neither appeared nor filed his W.S. In the meantime the management filed his appearance and was filing attendance on the adjourned date.

It is more than a year when the reference was made and even then the concerned workman has not filed his W.S. It appears that the concerned workman is not interested to pursue the industrial dispute raised by him and as such he is not filing his W.S. and is not taking any step.

As the concerned workman is not taking any step and is not interested in the reference, a 'No Dispute' Award is passed.

I. N. SINHA, Presiding Officer
[No. L-12012/10/86-D. IV-A.D.I.B.]

का. धा. 386.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार यूनाईटेड वेस्टर्न बैंक के प्रबन्धन के संबंध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निहित औद्योगिक विवाद में औद्योगिक न्यायालय अहमदाबाद के पंचपट को प्रकाशित करती है।

S.O. 386.—In pursuance of section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Court/Industrial Tribunal Ahmedabad as shown in the Annexure, in the industrial dispute between the employers in relation to the management of and their workmen,

ANNEXURE

BEFORE SHRI A. N. RAM, INDUSTRIAL TRIBUNAL,

AHMEDABAD

Ref. (TIC) No. 48/87

ADJUDICATION

BETWEEN

United Western Bank Ltd.,

AND

The workmen employed under it.
In the matter of transfer of Shri P. V. Choudhary, Clerk at Ahmedabad Branch.

APPEARANCES :

Messrs G. K. Dravid and N. K. Khasbardar, Officers
Personnel—for the Bank.

Shri R. D. Jogi—for the workmen.

AWARD

An industrial dispute between the United Western Bank Ltd., (hereinafter referred to as 'Bank') and the workmen employed under it was referred for adjudication to the Industrial Tribunal, Ahmedabad, under Section 10(1)(d) of the I. D. Act, 1947, by the Government of India, Ministry of Labour, by its Order No. J-12011/287-D. IV(A) dated 18-8-87. The dispute was allotted to this Tribunal by the President, Industrial Court, Ahmedabad. The terms of reference are as under :—

"Whether the action of the management of United Western Bank Ltd. in transferring Shri P. V. Choudhary, Clerk from its Ahmedabad Branch (Gujarat) to its branch at Panvel Bombay (Maharashtra) in August, 1986 is just and fair? If not, to what relief is the workman concerned entitled?"

2. The statement of claim in support of the demand was filed on 7-10-87 (Ex. 4). The same has been signed by Shri P. V. Choudhary, as Branch Secretary of the United Western Bank Karamchari Sangh (hereinafter referred to as Union). Along with the statement of claim copies of 19 documents were also enclosed. The Bank filed its written statement on 17-11-87 (Ex. 7). Along with the written statement, the Bank also filed copies of 7 documents. In the initial stages both parties mutually opposed the appearance of the representatives of the other. The appearance of Messrs G. K. Dravid and N. K. Khasbhardar was objected to by the 2nd party on the ground that they had not produced the proper authority letter. The appearance of Shri Premchand for the 2nd party was opposed by the 1st party on the ground that he was an Advocate. Shri Premchand then tried to put in his appearance as an officer of the Gujarat State Co-op. Banks Staff Union. This was also opposed by the 1st party. After a hearing, this Tribunal passed an order on 9-2-88, disallowing the appearance of Shri Premchand (Order below Ex. 13). Meanwhile, the representatives of the 1st party brought their authority (Ex. 14) and as the same was found to be in order, Messrs Dravid and Khasbhardar were allowed to appear on behalf of the 1st party Bank.

3. The Bank filed an application on 9-2-88 (Ex. 16) and again on 12-4-88 (Ex. 22) stating that as mentioned in its written statement, the dispute referred for adjudication has not assumed the character of an industrial dispute and that the Tribunal has no jurisdiction to entertain the reference; that this question should be decided and the reference should be summarily dismissed. At the instance of Shri Choudhary, the workman concerned, and with the consent of the Bank's representatives the matter was adjourned to 25-2-88 and again to 12-4-88. On that day, one Shri R. D. Jog, a voluntary member of the United Western Bank Karamchari Sangh wanted to appear on behalf of the workmen. Shri R. D. Jog had produced an authority of the General Secretary of the Union (Ex. 19) as also a copy of the Resolution of the Managing Committee of the Union dated 21-12-87 (Ex. 20) co-opting him as a voluntary member of the Union and authorising him to conduct all legal matters of Karamchari Sangh including departmental enquiries. Shri Jog's appearance was objected to by the 1st party, on the ground that the Union had not espoused Shri Choudhary's cause before the date of reference. After hearing the parties, this Tribunal passed an order on 12-4-88 allowing Shri Jog to appear on behalf of the second party. As Shri Jog wanted some time to study the papers, the matter was adjourned to 13-6-88 and then to 14-7-88. On 14-7-88 both the parties were heard fully on the preliminary issue raised by the Bank. It may be stated that the Union had not led any oral evidence in respect of this issue; the Bank led the evidence of Shri Dravid, Officer in the Personnel Department (Ex. 35).

3. The main contention of the Bank is that the dispute referred for adjudication has not been espoused by the Union or any substantial No. of employees and that the dispute is not an industrial dispute. In this connection it has been urged on behalf of the Bank that the strike notice of 22-9-86, and other documents have been signed by Shri P. V. Choudhary, who is not an office bearer or Executive Member of the Union as per the list submitted by the Union to the Bank and he is not competent to raise an industrial dispute,

that the strike notice refers to four demands pertaining to transfer and are of a general nature and does not pertain to the transfer of Shri Choudhary as such, that the Union, which is the recognised Union in the Bank, has not appeared before the Conciliation Officer or even before this Tribunal. The representatives of the Bank had cited certain decisions in support of their contention and the same would be referred to hereafter.

4. The representative of the 2nd party has urged that the local unit of the Union at Ahmedabad is competent to raise an industrial dispute to ventilate the grievance of that unit under the circumstances prevailing at the unit level; that the strike notice was properly served; that the Branch Secretary of the Union had attended the Conciliation proceedings; that the reference was given in the name of the Branch Secretary and all proceedings before the Tribunal were represented through the Branch Secretary; that the Central Office of the Union was busy examining the issue and at the appropriate time had deputed Shri Jog to represent before the Tribunal and therefore the contention of the Bank that the espousal of the dispute was not taken by the Union is not true; that the dispute referred for adjudication is an industrial dispute and that therefore the preliminary contention of the Bank should be rejected.

5. Now alongwith the written statement, the Bank has enclosed a letter of the Union dated 29-4-1984 (Ex. 24) addressed by the Union from the State Office to the General Manager of the Bank stating that a meeting of the General Body of the Union had been held on 21-4-1985 at Aurangabad and that members of the Executive Committee and other office bearers were elected. A list of the said members of the Executive Committee and other office members thus elected was enclosed. The same has been filed on record. The receipt of this list has been confirmed by the witness appearing for the Bank who has stated as follows :—

"I am shown Annexure 7/1. It is a letter written by Union to Bank intimating the names of office bearers and Executive Committee Members. The list is exhaustive. Date of letter is 29-4-85. No change is communicated by the Union thereafter." In cross examination by Shri Jog he has interalia stated that the Central Office of the Union has never stated that he (Shri Choudhary) is an office bearer of the Union. I have gone through the list produced at Annexure 7(1) which is given Ex. No. 24 and I find that Shri Choudhary's name does not appear anywhere in the said list. No further change has been communicated by the Union to Bank. Thus from the evidence brought on record it cannot be stated that Shri Choudhary was an Executive Committee Member or other office bearer of the Union. He had therefore, no right to act on behalf of the Union. He appears to have styled himself as "Branch Secretary" of the Union without any authority.

6. In the statement of claim, it has been stated in para 1, interalia that the second party has raised dispute as regards the transfer of Branch Secretary, Shri Choudhary of the Union. The Bank has not accepted the fact that there was any dispute between the Bank and the workmen regarding the transfer of Shri Choudhary; the Bank has stated that there was one strike notice which contains demands of a general nature and does not pertain to the transfer of Shri Choudhary. The 2nd party has not produced any evidence to show that a dispute regarding the transfer of Choudhary was ever raised by the Union. The 2nd party has, along with the statement of claim, enclosed a copy of the strike notice of 22-9-86, but it pertains to 4 demands which are of a general nature. There is no specific demand regarding the transfer of Shri Choudhary. Further it is an admitted position that the Conciliation proceedings were attended by Shri Choudhary (who had no such authority) and not by any other Executive Committee member or office bearer of the Union. This shows that till the date of reference, the Union has neither espoused the cause of Shri Choudhary nor has it appeared in the conciliation proceedings. There is also no evidence adduced to show that any substantial No. of work-

men have espoused the cause of Shri Choudhary. The contentions of Shri Jog referred to in para 4 above, viz. that the local unit at Ahmedabad is competent to raise an industrial dispute and that strike notice was properly served cannot be accepted. The further contention of Shri Jog that the Branch Secretary had attended conciliation proceedings; that the reference was given in the name of the Branch Secretary and that the Branch Secretary attended the proceeding before the Tribunal etc. also fails because basically Shri Choudhary had no authority whatsoever to act on behalf of the Union. Shri Jog then tried to contend that the Union has now authorised him (Shri Jog) to attend the proceedings before the Tribunal and that therefore there is espousal by the Union. This argument cannot be accepted. Shri Jog has been authorised by a letter of the General Secretary of the Union on 29-3-88 to appear in Reference pending before this Tribunal. The Reference has been made as early as on 18-8-87 while the authorisation has been given after a lapse of about 7 months from the date of reference.

7. We may now refer to some of the decisions which have been relied upon by the 1st party Bank. In the case of Bombay Union of Journalists v. The Hindu (1961 II LLJ p. 436), the Supreme Court observed that in each case in ascertaining whether an individual dispute has acquired the character of an 'industrial dispute', the test is whether at the date of reference, the dispute was taken up as supported by the Union of workmen or by an appreciable number of workmen. In the case of workmen vs. Dharampal Premchand (Saughandi) (1965 I LLJ p. 528) distinguishing the aforesaid case, the Supreme Court held that notwithstanding the width of the words used in S2(k) of the Act, a dispute raised by an individual workman could not become an industrial dispute unless it is supported by his union or in the absence of a Union by a number of workmen, that a Union may validly raise a dispute though it may be a minority Union of the workmen employed in an establishment, that if there was no Union of workmen in an establishment a group of employees could raise the dispute which becomes an industrial dispute even though it is a dispute relating to an individual workman, and lastly, where the workmen of an establishment have no Union of their own and some or all of them have joined a Union of another establishment belonging to the same industry, if such a Union takes up the cause of the workmen working in an establishment which has no Union of its own the dispute would become an industrial dispute, if such Union could claim a representative character in a way that its support would make the dispute an industrial dispute.

8. In the case of the workmen of Indian Express News papers (P) Ltd. Vs. Management of Indian Express (P) Ltd. 1972 II LLJ p. 132 the Supreme Court held that about 25% of the workmen of the establishment would constitute the requisite number for valid espousal of the dispute. In the case of Western India Match Company Ltd. Vs. Western India Match Company Workers Union, the Supreme Court stated :

"The only condition for an individual dispute turning into an industrial dispute, as laid down in the case of Dimakuchi Tea Estate (1958-S.C.R. 1156), is the necessity of a community of interest and not whether the concerned workman was or was not a member of the Union at the time of his dismissal. The parties to the reference being the employer and his employees, the test must necessarily be whether the dispute referred to adjudication is one in which the workmen or a substantial section of them have a direct and substantial interest even though such a dispute relates to a single workman. It must follow that the existence of such an interest, evidenced by the espousal by them of the cause, must be at the date when the reference is made and not necessarily at the date when the cause occurs, otherwise, as aforesaid, in some cases a dispute which was originally an individual one cannot become an industrial dispute. Further the community of interests does not depend on whether the concerned workman was as member or not at the date when the cause occurred, for, without his being a member the dispute may be such that other workmen by having a

common interest therein would be justified in taking up the dispute as their own and espousing it."

In the case with which we are currently, concerned, as stated earlier there is no evidence adduced to show that Shri Choudhary was a Executive Committee member of other office bearer of the Union. He has therefore, no right to act on behalf of the Union. There is no evidence to show that the dispute has been espoused by the Union or by substantial number of workmen. The Union has not taken part in the conciliation proceedings. Its representative has not attended before the Tribunal till 12-4-88. Thus on the date of reference, there was no industrial dispute as such. It must be stated that there is also no evidence on record to show that the dispute pertaining to the transfer of Shri Choudhary had ever been raised; the strike notice relied upon by Shri Choudhary pertains to demands of a general nature. It is, therefore, clear that on the date of the reference there was no industrial dispute as such pertaining to the transfer of Shri Choudhary. The reference is, therefore not competent and is liable to be rejected. I direct accordingly.

Ahmedabad,

Dated : 9th August, 1988.

A. N. RAM, Industrial Tribunal

[No. L-12011/2/87-D.IV-AB-I (B)]

PADMA VENKATACHALAM, Dy Secy.

नई दिल्ली, 6 फरवरी, 1989.

वा.प्र. 387.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार संसद में मिनरल्स लि. के प्रबंधन से सम्बद्ध निजीकरण और उनके कर्मचारों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बंगलोर के पंचपट को प्रकाशित करता है, जो केन्द्रीय सरकार को 31-1-89 को प्राप्त हुआ था।

New Delhi, the 6th February, 1989

S.O. 387.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Bangalore as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s Mysore Minerals Limited and their workmen, which was received by the Central Government on the 31-1-89.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT BANGALORE

Dated 25th January, 1989

I PARTY

Shri M. Rajan
Driver

Door No. 402, Ward No. 13 M/s. Mysore Minerals Ltd.
Banadakkeri, Hospet

II PARTY

Vs. Chairman and Managing
Director
No. 39, M.C. Road,
Bangalore

APPEARANCES :

For the I Party Shri U. B. Theertha Rao Authorised Rep.
of I party Advocate.

For the II Party Shri Somashekhar.

AWARD

By exercising its powers under Section 10(1) (d) and (2A) of the Industrial Disputes Act, the Government of India, Ministry

of Labour has made the present reference on the following point of dispute by its Order No. L-29012/39/87-D.III (B) dated 29-1-1988.

POINT OF REFERENCE

"Whether the action of the Management of M/s. Mysore Minerals Limited, Jambunatha Road, Taluk Hospet, Bellary District in terminating the services of Sri M. Rajan, Driver, w.e.f. 7-10-1983 is justified. If not, what relief is the workman entitled to?"

2. The I party workman has filed his claim statement and inter alia, it is stated as follows.

The I party workman Rajan was appointed as a driver in the Jambunatha Iron Ore Mines, Hospet, on 8-1-83 on daily wages of Rs. 13.50 per day. On 12-9-83 the vehicle driven by him met with an accident. A show cause notice dated 14-9-83 was issued to him. The police had filed a chargesheet against him, alleging rash and negligent driving it was based in the local court. He wanted to contest the case. The II party promised reimbursement of all the costs and asked him to plead guilty of the charges. There was also an understanding that no disciplinary action whatsoever would be taken against him, for the reason that accidents of mine lorries are normal, in the mining operations. The I party workman believed and pleaded guilty. The court imposed a fine of Rs. 1,500. The II party asked him to pay the fine immediately and promised to reimburse after necessary sanction. There is a custom, usage, and convention with the II party to pay all the expenditures involved in the motor vehicle accidents owned by them. The I party paid the fine amount in three equal instalments. The photo copies of the receipts are enclosed. Work was denied to him for three months. He was allowed to resume to his duties but reimbursement was postponed on one pretext or the other. No subsistence allowance was paid to him. No enquiry was held against him. He was not given any opportunity to defend himself. The action of the management is in violation of the principles of natural justice. However, he was given employment three months after the date of suspension till November, 1986. In November, 1986, he was told that his services were terminated because of the rash and negligent driving, on 12-9-1983. He was asked to get out of the mines on the threat of physical removal. He was in continuous and uninterrupted service from 8-1-83 to 15-11-86. The management has admitted in its letter dated 8-8-87 that he has put in 269 days of service. No enquiry was held against him. The termination of his services is in violation of the standing orders and also the provisions of the I.D. Act. The termination of his service by a verbal order is illegal. He may be ordered to be reinstated with all his consequential benefits.

3. The II party management has filed the counter statement and inter alia, it is contended as follows.

He was appointed as a Tipper Driver purely on temporary basis for a period of 3 months from 8-1-83 on daily wages of Rs. 13.50 per day. On his request and humanitarian grounds, it was extended for a period of 3 months from 8-4-83. Then it was further extended for a further period of 3 months from 8-7-83. On 12-9-83, he caused accident to the Tipper MES 5674 by his rash and negligent driving. In the said accident, workers of the II party were injured and two had sustained fractures. He was chargesheeted by the local police for rash causing injuries to 22 persons and fractures to two persons by his rash and negligent driving. He pleaded guilty and the Hon'ble court imposed a fine of Rs. 1,500. He did not attend to his duty after 12-9-83. A show cause notice dt. 14-9-83 was issued to him to show cause as to why his services should not be terminated for the said act of misconduct. His reply was not satisfactory. In the past, he has been warned twice for negligent driving. He had been warned twice for negligent driving. He had admitted to the charge of rash and negligent driving before the Hon'ble judicial magistrate. There was no necessary to hold further enquiry. He had not put in 240 days of continuous service between 8-1-83 and 7-10-83. His services were terminated with effect from 7-10-1983. It is in accordance

with law. The allegation that he wanted to contest the case but the II party promised to reimburse the cost etc., and asked him to plead guilty on that there was a clear understanding that no disciplinary action will be taken against him are all false. It is false that such accident happen in normal course. It is false that there is any custom, usage or convention to reimburse such costs. His services has been terminated on 7-10-83, and he has paid the fine amount on 18-10-83 and 29-10-83 and it cannot be under compulsion by the II party. His service was terminated on 7-10-83 and the question of keeping him under suspension for three months or taking into service till November, 1986 did not arise. There is no violation of the principle of natural justice. It is false that with the threat of physical removal, he was asked to go in November 1986. Since he pleaded guilty before the criminal court on 3-10-83, his services were terminated on 7-10-83. It is false that the II party has admitted in the letter dated 8-8-87 that he has worked for 269 days. During the period of 8-1-83 and 7-10-83, he did not put in continuous service of 240 days. The termination of his service is covered by Section 2(oo) (bb) of the I.D. Act, for he was appointed only for three months from 8-7-83 till 7-10-83. His service was terminated on 7-10-83 and he has raised the dispute on 30-4-87, about 3 years and 7 months after the order of termination. The reference is bad in law for laches and delay. The reference may be rejected.

4. The I party workman has filed a rejoinder and therein it has been contended that the counter statement filed by the Technical Director of Mysore Minerals Limited may be rejected, since it is signed by a person other than the one named in the order of reference. It is further contended that the Chairman of the II party or the Mines Manager of Jambunathanahalli Iron Ore Mines ought to have signed the counter statement. The right of the II party to file the counter statement may be forfeited. The I party has further denied the other statements made by the II party in the counter statement.

5. Since the I party workman raised the objection regarding the propriety of the Technical Director filing the counter statement, the parties were heard on the said point and a common order in C.R. No. 117/87, 164/87 and 2/88 dated 17-6-88 was passed and it is held that the said officer was competent to sign and present the counter statement for the II party.

6. The management has then examined one witness and has got marked Exs. M-1 to M-20.

7. The workman has examined himself and got marked Exs. W-1 to W-3.

8. The learned counsel for the II party has been heard.

9. The learned representative of the I party filed his written arguments.

10. My finding on the point of reference is as follows.

The management of M/s. Mysore Minerals Limited, Jambunatha Road, Taluk Hospet, Bellary District was justified in terminating the services of Sri M. Rajan, Driver effect from 7-10-1983. He is not entitled to any relief.

REASONS

11. In the classification of Employees made in the Standing Orders—A "Company Temporary Employee" is defined as one whose terms and conditions of engagement are essentially of a temporary nature, of limited duration and whose name appears on the Company's rolls, separately, maintained for such employees. Standing Order No. 10 (d) deals with the subject of termination of employment of a temporary or casual employee. The only condition for terminating his services is that when his service is required to be terminated as a punishment, he should be given an opportunity of explaining the charges of misconduct alleged against him. Standing Order No. 12 deals with the acts and omissions which are treated as misconduct. Clause 12(c) deals with the misconduct of causing wilful damage or loss to the employer's goods or properties. Clause 12(f) deals with the misconduct

of habitual negligence or negligence of work. Standing Order No. 13(a) deals with the procedure to be followed in the case of disciplinary action to be taken by the management. Standing Order 13(c) states that on the conclusion of the enquiry of the criminal proceeding, if the workman is found guilty of the charges framed against him and if it is considered, after giving the workman a reasonable opportunity of making representation on the penalty proposed, an order of dismissal etc. may be passed.

12. MW-1 Shankar is the Mines Manager. His evidence shows that in view of the driving licence, copy of which is at Ex. M-1, the I party workman was appointed as a Driver as per Ex. M-2. Ex. M-2 dated 8-1-1983 indicates that the I party Rajan was appointed as a Driver on a consolidated wages of Rs. 13.50 per day with effect from 8-1-1983 on temporary basis for a period of three months. The evidence of MW-1 Shankar further shows that after the expiry of three months, he wrote to the Head Office for the continuation of his services as per Ex. M-3. Ex. M-3 dated 8-3-83 points out to the fact that the Manager had written to the Head Office that the services of the I party workman Rajan and 7 others were sought to be extended for a further period of three months. Ex. M-4 dated 18-3-83 is the order passed by the Head Office, showing that his services were continued till 8-4-1983. The evidence of MW-1 and Ex. M-5 dated 1-6-83 further show that the Mines Manager requested for further extension till 8-7-83 and the Head Office agreed and passed an order to that effect as per Ex. M-6 dated 10-6-1983. By virtue of Ex. M-6, the services of the I party Rajan had been continued from 8-7-1983 for a period of three months. It is the case of the management that during the period of the three months between 8-7-83 and 8-10-83, the I party committed the said act of driving the Tipper MES 5674 in a rash and negligent manner and causing injuries to 22 workers and also causing damage to the vehicle. Ex. M-7 dated 14-9-83 and the evidence of MW-1 Shankar show that Ex. M-7 was issued to him to show cause as to why he should not be terminated from service for the said act of misconduct. In para 4 of his evidence MW-1 Shankar swears that in July 1983, the I party had caused injury to one helper by name Kalil and Khalil was not above to attend to his work for 23 days. In para 5, he further swears that on 19-8-83, he had neglected his duties and had committed an act likely to cause an accident and that axle of the rear wheel had been broken and the vehicle had not tumbled down. In regard to the show cause notice, Ex. M-7, MW-1 Shankar has sworn that the I party workmen did not give any reply. He has testified to the fact that the Hospet police had chargesheeted him for the rash and negligent driving and in the criminal court he had admitted, to his guilt and was fined by the court. Ex. M-8 is the letter from the Head Office to the Mines Manager MW-1 Shankar. It reads that the Mines Manager was permitted to discontinue the services of Rajan with effect from 7-7-83. Ex. M-9 dated 17-10-83 is another memo issued to the I party workman showing that though a memo dated 14-9-83 had been issued to him, he had not sent any reply. But, however, one more opportunity was given to him to submit his explanation in writing. He has been further told that if no reply is received further action will be taken in accordance with the standing orders. Para 8 of the evidence of MW-1 shows that the I party workman did not give any reply for Ex. M-9 and secondly a letter of termination Ex. M-10 dt. 20-10-83 was issued to him. Ex. M-11 dated 2-11-83 discloses that the Head Office wrote to the Mines Manager that he was permitted to discontinue the services of I party Rajan. The evidence of MW-1 Shankar, the Mines Manager is supported by the report of the Manager, Ex. M-12 and the letter describes that 21 workmen were injured in the incident and Sl. No. 6 Irama and Sl. No. 15 Ulamma had suffered fractures. The Mines Manager had requested the Head Office to grant special sick leave and the management was compelled to grant about 4 to 5 days of sick leave to almost all of them. Ex. M-12 further shows that the Mines Manager requested the Head Office to see that these injured workmen were paid wages under the workman's Compensation Act. By Ex. M-13 dated 19-10-83, the Head sanctioned the said leave and payment of wages. In regard to the two workmen who were still under treatment as in-patients in the hospital at Kariganoor, the Mines Manager was asked to send a report to the Head Office about the nature of their

disablement. By Ex. M-14 and M-15 and from the evidence of MW-1, it has been shown that the court ordered that compensation of Rs. 42,054 should be paid to Irama and the same was paid by the Insurance Company as per Ex. M-14. The evidence of MW-1 and Ex. M-15 further indicate that a sum of Rs. 1,500 was deposited as interest on the aforesaid amount. The evidence of MW-1 further runs that from October 1983 till August 1987, the I party Rajan never approached them nor did he write any letter, either himself or through any union. According to him, Ex. M-16 dated 30-4-87 is the ever first letter by him to the Assistant Labour Commissioner, Bellary in that regard. Ex. M-17 is the reply sent by the management to M-16. Ex. M-19 is the form 'B' register and it shows at Ex. M-19 (a) that his services had been terminated in October 1983. W-1 has categorically sworn that the I party Rajan has never worked between October 1983 and November 1986 and in that regard they have already produced 8 registers of wages from 1983 to 1986 in this Tribunal in CR No. 117/87. He has been questioned in the cross-examination that the I party had put in the service of 269 days, but MW-1 has categorically sworn in para 28 that the I party had put in only 229 days of service. Though it has been admitted by him that the I party was working with them between 8-1-1983 and 7-10-83, it has been made out by the II party that he has actually worked only for 229 days and not for any period of 240 days or more. For the question as to why no domestic enquiry was held against him, MW-1 has explained that because he had been convicted by the criminal court, there was no necessity to hold such enquiry. It has been denied by him that he was not paid any subsistence allowance during the period of suspension. As regards the alleged convention, custom or usage that the II party management should bear all the expenses of any accident that may occur, MW-1 Shankar has explained in Para 37 that about the fine, the Driver himself is responsible and he shall have to pay a fine to the court.

13. As against the aforesaid statement, the workman has examined himself and he has stated that he was appointed as per Ex. M-1 and he was kept under suspension as per Ex. W-2, and that though he was kept under suspension, he was not paid any subsistence allowance. The registers produced by the management in C.R. No. 117/87 were made available to both the parties. The learned counsel for the I party did not point out to the wage registers to indicate that no subsistence allowance was paid to him during the period of suspension. The said registers were not pointed out by the I party even for showing that since three months, after the suspension, he was again taken for work and thereafter he worked in the II party continuously. In para 4 of his evidence, the I party workman has admitted that he attended the court and paid a fine of Rs. 1,400 and when he pointed out the receipt to the Manager, the Manager told him that he will write to the Head Office, get sanction and he will pay the same. In the claim statement itself, it is conceded that he paid a sum of Rs. 500 on 3-10-83, another sum of Rs. 500 on 18-3-83 and still another sum of Rs. 500 on 29-10-83 and that the court had sentenced him to pay a fine of Rs. 1,500. The evidence produced by the management is unassailable on the point that he had been convicted and sentenced by the criminal court for rash and negligent driving of Tipper MES 5674 and causing injuries to 22 workmen and grievous injuries to two workmen and was punished with a fine of Rs. 1,500. There is no dispute on the point that he was convicted on 3-10-1983. The show cause notice dt. 14-9-83 calls upon the I party workman to show cause as to why his services should not be terminated for rash and negligent driving and causing injuries to the said 22 persons and also causing damage to the vehicle. Ex. M-9 dated 17-10-83 was a reminder memo and he was again given an opportunity to show cause as to why disciplinary action should not be taken for the said act of misconduct. By 17-10-83, the I party workman had already suffered the conviction and payment of a fine of Rs. 500 on 3-10-83. The statement made by the I party that after he paid a fine of Rs. 1,500, he showed the receipts to the Manager and the Manager promised him that he will get the sanction and pay the same can hardly be believed when the management had served on him the first show cause notice Ex. M-7 dt. 14-9-83 and the reminder memo Ex. M-9 on 7-10-83. It is not the case of the I party workman that when he received these show cause notices, he wrote back

either to the Manager or to the Head Office that the Manager had made a promise that the workman should admit to his guilt and that it will be the management which should bear the expenses of the fine and other costs. There is no specific suggestion made to MW-1 Shankar in that regard. In para 9 of his evidence, WW-1 Rajan the workman states that in November 1986, they orally stopped him from going to work saying that there was no work for him. In para 10, he further states that, four months thereafter, he raised the dispute. Even in the petition made to the Assistant Labour Commissioner, Ex. M-16, it has not been contended that on the strength of promises made by the management, the I party workman admitted to his guilt before the criminal court. What he has pleaded is that the management assured him to reimburse the amount of fine, but when the amount of fine was paid he was chargesheeted and kept under suspension on 14-9-83. The sequence of events as made out in Ex. M-16 that after the fine amount was paid he was chargesheeted and kept under suspension by an order dated 14-9-83 is contradictory to his case endeavoured to be put forth and proved. It is reiterated that it was only on 3-10-83 that he admitted to his guilt before the criminal court and there is obviously no truth in his contention that after he paid the fine, the management issued him a chargesheet and kept him under suspension on 14-9-84. Though, he has contended in Ex. M-16 that he was allowed to work till November 1986, no material has been put forth by him to substantiate the same. At the earliest opportunity, the management has denied the allegation that any promise was made to reimburse and that he never worked again till November 1983, as alleged by him. Ex. M-17, the counter statement filed before the Conciliation Officer has been further substantiated by the minutes of conciliation, Ex. M-18. Neither Exs. W-1, W-2 and W-3 nor the evidence of WW-1 is of any assistance to him in showing that three months after the date of suspension, the management again took him and then he worked till November, 1986. On the other hand, the management has established that as per the order of termination, Ex. M-10, his services were terminated on 21-10-1983 and thereafter he never worked with them again.

14. The learned representative for the I party has contended in the written argument that the Technical Director is not competent to sign, verify and file the counter statement and that it may be held that there is no valid counter statement at all. The said contention has been already turned down by a considered order dated 17-6-1988.

15. It has been contended in Para 7 of the written arguments of the I party that he had worked for 240 days between the period 8-1-83 and 7-10-83 and the termination of his service without complying with the provisions of section 2A and 25F is illegal. In the first place, the management has contended that his service was terminated for an act of misconduct of rash and negligent driving causing simple hurt and grievous hurt to various workmen numbering about 22 and it has been already pointed out that commission of an act of negligence is a misconduct under the standing orders. It is not a case of discharge simpliciter which called upon the management to comply with the provisions of section 25F read with section 2(oo). Even otherwise, the management had established that during the aforesaid period he had worked only for 229 days and not 269 days as contended by the I party. It is reiterated that though the relevant wage registers were before the Tribunal, no attempt has been made by the I party to demonstrate from them that he has received any wages for any other period except for 229 days between 8-1-83 and 7-10-83. Even, if it is considered to be a case of workman who has put in a service of more than 240 days, the case put forth for the management shows that he had been appointed on temporary basis and the period of his service was only till 7-10-83. The management is thus justified in terminating his services and the said termination did not amount to retrenchment, being saved by Clause (bb) of Section 2(oo) of the I.D. Act. The contention raised by the I party in Para 7 of the written arguments is not available.

16. In para 8 of the written arguments, it is stated that it was only an accident and there was no misconduct on the part of the workman. The contention that the condition of

the vehicle was bad, condition of the road was bad, it is always dangerous to drive the vehicles in the mines are only subsequent developments and there is no pleading to that effect in the claim statement. It has been already observed that the I party has failed to prove that there was any usage, custom or convention that the criminal or civil liability of any such act of the driver was to be borne by the management. On the contrary, it has been held that the management has proved that it neither promised nor undertook to protect him from any civil or criminal consequence or subsequently undertook to reimburse him. The contentions raised in paras 10 to 14 of the written arguments do not hold water.

17. The case of the workman that he again worked and continued to work till November, 1986 has been carefully examined and the evidence discloses that the said case is not supported by any evidence. The contention raised in para 15 of the written argument is not sustainable.

18. In para 15 of the written argument, it has been contended that there was an obligation on the part of the II party to hold an enquiry that the order of dismissal is contrary to law. It has been already pointed out as to how the standing orders provided that if there is a conviction by the criminal court, there need not be any enquiry. The said contention has no force.

19. The I party has raised the contention that no subsistence allowance was paid. It has been stated in para 21 of the written arguments that there is no entry regarding payments of subsistence allowance and thus it may be held that the order of termination is illegal. The order of suspension is dated 14-9-83 and it is at Ex. M-9. The workman has pleaded guilty to his charges before the court on 3-10-83. The liability of the management to pay the subsistence allowance was only till 3-10-83. There is a specific evidence of MW-1 Shankar about the payment. I do not find any force in the contention that the principles of natural justice have been violated, for the reason that he was not paid any subsistence allowance. In my view, there was no necessity to hold any domestic enquiry and it cannot be said that the dismissal on the basis of his plea of guilt before the criminal court is illegal.

20. There is no case of abandonment pleaded by the II party and this Tribunal need not enter into that aspect.

21. The learned representative for the I party has cited some authorities in Para 28 of the written arguments. It has been stated therein that these authorities have been relied, or show that without a regular enquiry, there will be breach of the principles of the natural justice and that the consequent dismissal cannot be sustained. In view of the specific provisions of the standing orders pertaining to the present case, it has been held that when an employee admits about his guilt before the criminal court, the management need not hold any domestic enquiry and can very well pass an order of dismissal on the basis of the conviction and sentence of the criminal court. The authority is of no avail. It is difficult to appreciate the same in the absence of the books.

22. None of the contentions raised in the arguments is sustainable in the context of the facts and circumstances of the case as shown above.

23. The learned counsel for the II party contended that there is inordinate delay of more than 3 years and that the conduct of the I party workman itself indicates that he never worked till November 1986, as alleged by him, and that he had kept quiet, knowing full well that he had no case, but it is only at the instigation of the third party that he had raised a false dispute. However, it suffices to hold that the evidence produced by the I party workman does not explain about the delay of about 3 years in raising the dispute.

24. Looking from any angle, I do not find that the management has committed any act of illegality in terminating his services.

25. In the result, an award is passed to the effect that the Management of M/s. Mysore Minerals Limited, Jambunatha Road, Taluk Hospet, Bellary District was justified in terminating the services of Sri M. Rajan, Driver w.e.f. 7-10-1983 and that he is not entitled to any relief.

(Dictated to the Personnel Assistant, taken down by her, not typed and corrected by me.)

B. N. LALGE, Presiding Officer
[No. L-29012/39/87-D.III(B)]

का.मा. 388.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केंद्रीय सरकार सिसस मैसूर मिनेरल्स लि. के प्रबंधकों से सम्बद्ध निरोधकों और उनके कर्मचारों के बीच, अनुबंध में निहित औद्योगिक विवाद में केंद्रीय सरकार औद्योगिक प्रतिकरण, बंगलूर के पंचाट को प्रकाशित करती है, जो केंद्रीय सरकार को 31-1-89 को प्राप्त हुआ था।

S.O. 388.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Bangalore as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Mysore Minerals Ltd., and their workmen, which was received by the Central Government on the 31st January, 1989.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT BANGALORE

Bangalore, the 25th January, 1989

Central Reference No. 164/87

I Party

II Party

Vs.

President,

The Chairman and,

MML & Mines Employees' Managing Director,

Union Sri Panduranga Temple, M/s. Mysore Minerals Ltd.,

Opp. Taluka Office,

No. 39, M. G. Road,

Hospet-583201.

Bangalore-I.

APPEARANCES :

For the I Party Shri U. B. Theertha Rao.—President for the I Party Union.

For the II Party Shri Somashekar.—Advocate.

AWARD

By exercising its powers under Sections 10(1)(d) and 2(A) of the Industrial Disputes Act, the Government of India, Ministry of Labour has made the present reference on the following point of dispute by its Order No. 2(4)/86-Con.II/D.III (B)/D.II(A) dated 4-11-1987.

POINT OF REFERENCE

"Whether the management of M/s. Mysore Minerals Ltd., Jambunathanahalli Iron Ore Mines are justified in withdrawing the canteen facility enjoyed by the workmen for 3 years without any notice under Section 9(A) of the I.D. Act? If not, to what relief are the workmen entitled?"

2. The I party Union has then filed its claim statement and inter alia, it is contended as follows.

The II party is running Iron Ore Mines at Jambunathanahalli village for the last 20 years. They have engaged a

labour force of about 300. As a customary concession and privilege, the II party was running a canteen on its own and etables and drinks were supplied at concessional rates. The following facilities were given by the II party to the persons who were running the canteen for the last 10 years and the cost and expenditure involved in the same was borne by the II party.

(a) The entire required quantity of potable water was being fully supplied through their lorries daily and regularly.

(b) All the utensils required for usage at the canteen were supplied without any charge by the second party.

(c) The monthly rent of Rs. 150 (Rupees One hundred and Fifty only) for the building where the canteen was run, was being paid by the second party.

(d) Personnel required for running the canteen was provided by them.

Besides the above, many other facilities were also provided for running the said canteen by the second party.

When the canteen was being run, a concession of Rs. 150 per each month was enjoyed by a workman from 3-9-1985, the II party arbitrarily closed the canteen in violation of Section 9A of the I.D. Act. No notice was given about the closure. The procedure required to be followed in the closure has not been followed. It may be declared that the closure of the canteen is illegal. A sum of Rs. 12,15,000 may be awarded as compensation as a loss suffered by the workmen. The II party may be ordered to restart the canteen forthwith and a cost of Rs. 15,000 may be awarded.

3. The II party management has filed its counter statement and inter alia, it is stated as follows.

In the year 1982, transport fleets from other mines were deputed to carry the iron ore from the II party mines to MMTIC. About seven trucks came to Jambunathanahalli mines. There were 10 drivers, 10 cleaners, 7 mechanical staff and 5 Transport supervisors. The distance between the office of Hospet Mines and Jambunathanahalli mines is about 6 kilometres. On the request of the said persons who had come on deputation, a mess was started as Hospet mine office and one workman was sent for the said purpose. Majority of the workmen of the transport fleets were bachelors. The labour camp of Jambunathanahalli mines is at a distance of about 2.5 to 3 kilometres from the main mine spot. None of the 188 mine workmen of the mines requested for any mess and none of them availed the said facility given from 1982, till it was closed in 1985. The transport fleets were retransferred to their original places. No regular employee of the mines was availing the benefit of the mess, since the distance between the said mess and the work spot of Jambunathanahalli Ore mines is about 6 kilometres and still away from the labour camp. Even after 1985, the mess was continued for sometime, because the transport fleet had been sent to transport for shipment of chromite and manganese and it was hoped that it may come back. At that time, there were only seven persons of the II party transport fleet who were taking food. The 7 employees of the supervisory cadre got married and stopped taking food in the mess. The transport fleet did not return. It was found that a large number of outsiders were allowed to take food without the sanction or approval of the management. The 2 mess employees were transferred to the mine. The management was justified in closing the mess. There is no violation of Section 9A of the Act. The other mine workers are not interested and concerned in the dispute. It is not an industrial dispute as per Section 2(k) of the Act. The reference is liable to be rejected. Majority of workmen of the II party are not members of the I party and they have not authorised the I party to raise the dispute. The union has no locus standi. It is false that there are about 300 workmen in the II party mines. There are only 188 workmen. The canteen was not being run as a customary concession or privilege or for 10 years and etables and drinks were not supplied at concessional rates. It is not true that a concession of

Rs. 150 was given to each workman. The running of the mess was not a service condition of the workmen. The closure of the mess did not amount to violation of item No. 8 of 4th Schedule or Section 9A. The reliefs sought for by the I party are baseless. The reference may be rejected.

4. The I party union has filed a rejoinder and therein it has been contended that the Technical Director of the II party is not a party to the reference and that the counter statement signed and verified by him is not in order and that the same may be rejected. It is then contended that the other contentions raised by the II party are not true or correct.

5. The following additional issue was raised, in view of the said pleadings.

"Whether there is proper espousal and whether the First Party has the locus standi to prosecute the dispute?"

6. The II party has examined 1 witness and has got marked Exs. M-1 to M-8.

7. For the I party, two witnesses have been examined.

8. The I party has filed written arguments.

9. The learned counsel for the II party has been heard.

10. My findings on the additional issue and the point of reference are as follows :

ADDITIONAL ISSUE No. 1

NO

POINT OF REFERENCE

The I party has not proved that the management was running a canteen for the past, more than 3 years as a customary privilege or concession. The closure of the mess did not require any notice under Section 9A of the Act. The management was justified in closure of the mess. The I party is not entitled to any relief.

REASONS

ADDITIONAL OBJECTION

11. On the point whether the Technical Director is competent to sign and verify the counter statement or not, the parties were heard and a considered order dt. 17-6-88 has been passed in the present case and also in CR. No. 117/87 and 2/88. It has been held that the Technical Director is competent to sign and verify the counter statement and the counter statement filed by the II party is in order.

ADDITIONAL ISSUE No. 1

12. In the claim statement, the I party is shown as the President. MML & Mines Employees' Union, Hosnet. In the claim statement, it has not been shown as to about how many workmen of the II party mines are the members of the I party union. As the name itself suggests, the I party union is a general union and its members are not only the workmen of MML but also members of other mines. In para 5 of the counter statement, it has been specifically contended that the majority of the workmen of the II party are not the members of the I party union and that they have not authorised the I party to raise the present dispute. In para 4, it has been contended that the present dispute is not an industrial dispute, since it is not supported by majority of 188 workmen of the II party mines and that it cannot be maintained under Section 2(k) of the I.D. Act. In order to prove it is an industrial dispute and that there is proper espousal by the I party union, the I party union has examined two witnesses. WW-1 Linge Gowda has stated that he was the care taker of the canteen. In the cross-examination in para 19, WW-1 concedes that he joined the II party only in 1982 and the canteen had been started since the

time he had joined. In para 23, he further admits that he has not produced any document to show that about 150 workmen were the members of the I party union. It is further admitted by him that no document had been produced to show about the membership of the I party union or to show as to how many workmen of the II party mines were the members of the I party union. The evidence of WW-1 discloses that they have spent a sum of Rs. 15,000 for collection of documents. It is further contended that the I party has suffered a loss of Rs. 15 lakhs and that there are accounts in that connection. No account has been produced by the I party. WW-2 is one Masuthi. His evidence shows that he has worked in Jambunathanahalli Iron Ore mines for 6 months and that in September 1985 it was closed. In the cross-examination, it is admitted by him that he has raised an individual dispute against the II party in CR No. 117/87 and that Sri Theertha Rao represents him in that case. In para 4 of his evidence, he states that he does not know how many workmen were working in the II party in 1982. It is admitted by him that he came to Jambunathanahalli only in June 1983 and prior to that he was in Sura Project, Dandeli. His evidence also does not show about the number of workmen of the II party who had become members of the I party union.

13. From Paras 16 to 21 of the written arguments dated 9-2-88 filed by the I party, it has been contended that the I party has the locus standi and there is proper espousal. It has not been pointed out as to how many workmen of the II party mines are the members of the I party union or whether there is any resolution of the executive committee or the general body of the I party union for raising the present dispute. On the other hand, the evidence of WW-1 Shankar the Miner Manager in Para 11 shows that the II party has not received any letter from the I party union that the workmen of the II party are the members of the said union. In para 12, he categorically swears that it is false to say that the workmen of the II party mines have authorised the I party union to raise the present dispute. In the cross-examination, it has been however elicited in Para 29 that the I party had written a letter that the workmen of the II party had become members of the I party union. The said admission does not convey that considerable number of workmen of the II party are the members of the I party union or that they have authorised the I party to raise the dispute.

14. In the case of Indian Oxygen Limited Vs. its Workmen (1979 LAB. I.C. Page 585) it has been laid down that no hard and fast rule can be enunciated to decide when and how many workmen should subscribe to a dispute, so that it can be called as an industrial dispute. In the Bombay Union Journalist's case vs. the Hindu (1961 II L.J.L. Page 436) it has been stated that in order that a dispute may become an industrial dispute, it has to be established that it had been taken up by the Union of employees or by an appropriate number of employees of the establishment. Whether a dispute is an industrial dispute or not, ultimately depends upon the facts of each case and the nature of the dispute. However, the claimant shall have to prove that the number of workmen supporting the dispute is such as to lead to an inference that the dispute is one which affects the workmen as a class. The evidence of WW-1 Linge Gowda has been demonstrated to be interested testimony. From the cross-examination of WW-2 Masuthi, it is manifest that he cannot be said to be an impartial witness. Secondly, he has knowledge about the workman of the canteen only for 6 months. Admittedly, he was not an office bearer of the union. In the absence of evidence to show about the number of the workmen of the II party, who are the members of the I party union and to show that where appreciable number of such workmen have supported the present case, it cannot be said that the present dispute is an industrial dispute within the meaning of Section 2(k) of the I.D. Act.

15. The learned representative of the I party has vehemently contended that the II party has held negotiations with the I party and that in the conciliation proceedings, the I party has represented the workman and therefore, it may be held that there is proper espousal. Merely because some negotiations were held with the I party or some correspondence has been made, it does not follow that the II

party admitted that a considerable number of its workmen are the members of the I party union. No explanation has been put forth as to why the I party has not produced the list of its membership or any resolution of the executive committee or the general body or any letter of a number of workmen of the II party to show that the dispute has the support of appreciable number of the workmen of the II party. The evidence produced by the I party falls very much short in proving the said additional issue.

POINT OF DISPUTE

16. Item No. 8 of IV Schedule states that if the management intends to withdraw any customary concession or privilege or change in usage, a notice under section 9 A shall have to be issued. In order to bring its case under the 8th item of the 4th schedule, the I party shall have to show that the canteen was being run as a customary concession or that it was a privilege enjoyed by the workman. In order to establish a custom, it shall have to be shown that a certain facility or concession or privilege has been provided for years to come and that by the time the management intended to change the same, it had acquired the character of a customary right. As observed earlier, the evidence of WW-2 Masuthi is only on the point that he knows about the running of the canteen only for a period of 6 months. The evidence of MW-1 Wings Gowda is barely on the point that the canteen was being run only from 1982. The ordinary meaning of custom is usual way of behaving or acting, which is established by usage, having the force of law. Except for the interested testimony of WW-1 and WW-2, no workmen of the II party of Jambunathanahalli mines has been examined to show that the workmen of the II party used to have the eatables and drinks at the said canteen, as a custom or a privilege. The I party has failed to prove that the canteen was run by the II party as a custom, concession or a customary privilege.

17. It has been pleaded by the II party that the canteen was started in 1982, only, in order to facilitate the drivers, cleaners and supervisory staff of the transport fleet which had been then transferred to Jambunathanahalli. The II party has contended that the labour camp is about 2-1/2 to 3 kms. away from the mining pool to Jambunathanahalli Iron Ore mines. It is further contended that the Hospet mines office, where the mess was being run, is itself, about 6 kms. away from the mines pool. In order to support the said contentions, the management has examined MW-1 Shankar, the Mines Manager. His evidence has established the fact that not a single workman of the mines used to go to the canteen and have the eatables or the food and that only the drivers, cleaners and supervisory staff of the transport fleet used to have eatables and food at the canteen. His evidence further proves that in 1985, the fleet was transferred and only 7 members were remaining and they too subsequently got married and that there was no necessity to continue the canteen. In order to support the said oral evidence, the management has produced the documents. Ex. M-1 dated 5-1-1981 shows that the Manager of the Jambunathanahalli had written to the Head Office to send the vehicles. Ex. M-2 dated 16-9-1981 reads that the Head Office was again requested to send the transport vehicles. Ex. M-3 dated 5-10-1981 is a letter by the Technical Director of the II Party Manager. The Manager has been assured that a transport vehicle will be sent to him. Ex. M-4 dated 20-5-1984 indicates that one vehicle along with a crew had been sent to Jambunathanahalli. Ex. M-7 dated 15-6-1984 deals with the log books of 4 vehicles working at Jambunathanahalli. Ex. M-9 is a copy of the agreement between M/s. Skand Private Limited and the II party for transporting the material in the year 1984-85. Ex. M-9 dated 24-8-1984 is a covering letter for Ex. M-9. Ex. M-10 dated 8-8-1985 is another letter from the Technical Director to the Skand Private Limited relating to the transport rate. By Ex. M-11 dated 22-8-1985 it has been shown that the Manager of the II party asked Shri S. K. Rao, Stores Clerk to verify about the utensils and other articles given for the running of the canteen. Ex. M-12 dated 3-9-1985 is a memo issued to WW-1 Linganna Gowda that permission given to him to run the mess had been revoked and he was asked to hand over all the utensils etc., to S.K. Rao. Ex. M-13 is a report by Mr. Rao that Linganna Gowda has refused to give the articles. Ex. M-14 is the inventory of the articles. Ex. M-1 to M-14, thus,

indicate that the canteen was being run only between 1982 and 1985. These documents thus support the evidence of MW-1.

18. From the evidence of MW-1 and the submission of the annual return, Ex. M-15, it has been established by the I party that at the relevant point of time, the total working force was of 188 and not 300, as contended by the I party.

19. It is one of the contentions raised by the I party that the eatables and drinks were supplied at the canteen at subsidised rates. The I party has not supported the said contention by any document. MW-2, Masuthi has sworn that the management used to take the canteen charges from the wages of the workmen, on the basis of the accounts maintained by the care-taker. In para 7 of his evidence, MW-1. Linganna Gowda states that he used to keep accounts and used to give the same to the II party and the II party used to adjust the charges in the salaries of the workmen. Nothing prevented the I party from calling for the necessary records. It is an admitted fact that the relevant wage registers have been produced before this court in CR No. 117/87. No prayer has been made to call for the said registers for the purpose of the present reference also and no attempt has been made to point out from the said registers that canteen charges used to be deducted from the wages of the workmen. In para 12 of his evidence, WW-1 states that he had kept all the records in the canteen, but the II party took away all the utensils and records when the canteen was closed. It is not the case of the I party that WW-1 Linganna Gowda, being the General Secretary of the I party Union had ever made any complaint, in writing, either to the officers of the Labour Department or to the Head Office of the II party that the II party officers had taken away all records when the canteen was closed. There is no dispute on the point that the II party is a state Government undertaking. It can hardly be believed that the II party used to supply food eatables, drinks etc. on subsidised rates without accounting for the same, and nothing prevented the I party from calling for the accounts of the II party, to show that in fact the II party was spent for the supply of the subsidised food. In para 10 of his evidence, WW-1 Linganna Gowda admits that the II party mines are at a distance of about 6 kms. from Hospet. In the very first para of his evidence, MW-1 Shankar has sworn that the mess was near the Hospet office of the mines and that the spot of the mines is about 6 kms., away from the Hospet. The evidence of WW-2, Masuthi on the point of distance of labour camp has not been substantiated by anything. It is difficult to believe that the workmen working in the mines used to go to the canteen which was near Hospet, by covering a distance of about 5 kms. Merely, because the II party had supplied some utensils, furniture and premises and had further deputed some workmen for running the mess, it does not follow that the II party was running a canteen and that it had become a custom or privilege in favour of the workmen.

20. In Paras 7 to 12 of the written arguments dated 9-12-1988, the learned representative for the I party has dealt with the evidence adduced by both the sides and has urged that the case put forth by the I party has been proved, but the evidence on record has been scrutinised and it is difficult to hold that the II party was running the canteen for several years and that the workmen were enjoying the canteen facility as a customary concession or a privilege. In the event of my finding that the canteen was run only to facilitate the workers of the transport fleet, it emerges that there was no customary concession or privilege or usage in favour of the workmen and that closing of the canteen did not call for issue of any notice under Section 9-A of the I.D. Act. A finding follows that the I party is not entitled to any relief.

21. In the II written argument filed on 16-12-1988, the authority of workmen of Dimakuchi Tea Estate Vs. Dimakuchi Tea Estate (1958 1 LLJ Page 500), has been cited. The principle laid down in the said authority is that it is the community of interest of the clause as a whole class of employers or class of workmen—which furnishes the sole nexus between the dispute and the parties to the dispute. The facts and circumstances of the present case would disclose that the canteen had been started near Hospet by the II

party only to facilitate the transport fleet and no canteen was started at the mines for the workmen of the mines and as soon as the transport fleet was transferred, there was no necessity for the II party to keep the canteen running, for others not being the workmen of the mines. The dispute does not involve community of interest of the workmen of the II party, so as to compel the II party to reopen the canteen. I am of the view that the authority does not help the I party. It is difficult to appreciate the points raised therein.

22. Looking from any angle, I do not find that the I party is entitled to any relief.

23. In the result, an award is passed to the effect that the II party management of M/s. Mysore Minerals Ltd., Jambunathanahalli Iron Ore Mines was not running the canteen as a customary concession, privilege or usage and that there was no necessity to issue any notice under section 9-A of the I. D. Act, before closing the canteen and that the I party is not entitled to any relief.

(Dictated to the Personal Assistant, taken down by her, got typed and corrected by me.)

B. N. LALGE, Presiding Officer.
(No. L-2/4/86-Con. II/B. III (B))

का.पा. 389.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 19 के अनुसरण में, केन्द्रीय सरकार मद्रास स्टीवडोरस एसोसिएशन के प्रबन्धकों से सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, प्रमुख में निविष्ट औद्योगिक विवाद में औद्योगिक अधिकारण, मद्रास के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 31-1-89 को प्राप्त हुआ था।

S.O. 389.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Madras as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Madras Stevedores Association and their workmen, which was received by the Central Government on the 31-1-89.

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL, TAMIL
NADU, MADRAS

Friday, the 30th day of December, 1988

Industrial Dispute No. 97 of 1987

(In the matter of the dispute for adjudication under Section 10(1)(d) of the Industrial Disputes Act, 1947 between the workman and the Management of Madras Stevedores Association, Madras-I and another)

BETWEEN

1. Thiru P. Loganathan, GPF 370, No. 95, Corporation Line, Madras.
2. The General Secretary, Madras Port & Dock Workers Congress, 7, Philips Street, Madras-600001.

AND

1. The Chairman, Madras Stevedores Association, 1st Floor, Madras Dock Labour Board Buildings, Rajaji Salai, Madras-600001.
2. The Chairman, The Madras Dock Labour Board, Madras Dock Labour Board Buildings, Rajaji Salai, Madras-600001.

(Impleaded as per order in Misc. Appln. No. 85/88,
dt. 9-12-88)

REFERENCE :

Order No. L-33012/2/86-D. IV(A), dated 18-8-87 of the Ministry of Labour, Government of India, New Delhi.

This dispute coming on this day for final disposal in the presence of Thiruvalargal Row & Reddy, A. Mani and S. Vaidyanathan, Advocates appearing for the workman and of Thiruvalargal T. Arulraj and J. James, Advocates for the Management upon perusing the reference, claim and counter statements and other connected papers on record and the Petitioner-workman and the Management having filed a joint memo and recording the same, this Tribunal passed the following Award.

AWARD

This dispute between the workmen and the Management of Madras Stevedores Association, Madras-I and another arises out of a reference under Section 10(1)(d) of the Industrial Disputes Act, 1947 by the Government of India in its Order No. L-33012/2/86-D. IV(A), dated 18-8-1987 of the Ministry of Labour for adjudication of the following issue :

"Whether the action of the Chairman, Madras Stevedores Association in dismissing from service Shri P. Loganathan, General Purpose Mazdoor, No. 370, w.e.f. 17-8-1985 is justified? If not, to what relief is the workman concerned entitled?"

2. Parties were served with summons. Both parties were represented by counsel.

3. Petitioner-workman filed his claim statement on 2-2-1988 putting forth his claim. In repudiation thereof the Management of Madras Stevedores Association, Madras filed their counter statement on 25-4-1988.

4. After several adjournments, when the dispute was called today, a joint memo was filed by the Petitioner-workman and the Management settling the claim of the workman. It is recorded.

5. Hence an award is passed as per joint memo. No Costs.

Dated, this 30th day of December, 1988.

K. NATARAJAN, Industrial Tribunal
(No. L-33012/2/86-D.IV(A)/II(B))

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL AT MADRAS

I. D. No. 97 of 1987

P. Loganathan ... Petitioner.

Vs.

Madras Dock Labour Board ... Respondent.

JOINT MEMO FILED BY

THE PETITIONER AND RESPONDENT

1. The petitioner categorically undertakes not to claim wages for the period between 17-8-85 and the date of his reinstatement.
2. The petitioner gives up once and for all his claims for backwages as specified in clause 1.
3. On the above premises, the respondents agree to take the petitioner into their service with continuity of service.

Dated at Madras this the 30th day of Dec., 1988.

Sd/- S. Vaidyanathan,
Counsel for Petitioner.
Sd/- (Illegible)
Petitioner.

Sd/- (Illegible)
Counsel for Respondent.
Sd/- (Illegible)
Respondent.
Deputy Chairman,
Madras Dock Labour Board.

का. भा. 390.—औद्योगिक विवाद प्रवर्धन विधायक, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारत गोल्ड माइन्स लि., के.जी.एस. के प्रवर्धन से सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निषिद्ध औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बंगलूर के पंचपर को प्रकाशित करती है, जो केन्द्रीय सरकार को 31-1-89 को प्राप्त हुआ था।

S.O. 390.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Bangalore as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Bharat Gold Mines Limited K.G.F., and their workmen, which was received by the Central Government on the 31-1-89.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL COURT

AT BANGALORE

Dated 25th January, 1989
Central Reference No. 86/87

I PARTY

Shri M.S. Zaimil Abdeen The Chairman cum Managing
Mutrathi Parambil House Director,
Kattungachira P.O. M/s. Bharat Gold Mines Ltd.
Irinjalakuda North 680125 Suvarna Bhavan
Trichur, Kerala
Corgaum Post,
Kolar Gold Fields,
Karnataka

II PARTY

APPEARANCES :

For the I party—Shri M. C. Narasimhan, Advocate.

For the II party Shri K. J. Shetty, Advocate.

AWARD

By exercising its powers under Section 10(1)(d) and (2A) of the I. D. Act, the Government of India, Ministry of Labour, has made the present reference on the following point of dispute vide its order No. L-43012/23/85-D. III(B) dated 20th April, 1987.

POINT OF REFERENCE

“Whether dismissal of Shri M. S. Zaimil Abdeen, Ex-General Duty Watchman, Watch & Ward Establishment by the management of M/s. Bharat Gold Mines Ltd., is justified? If not, to what relief is the workman entitled?”

2. The I party workman has filed his claim statement and inter alia, it is stated as follows :

He was chargesheeted by the Police in CC No. 1665/80 on the file of the I Class Magistrate, K.G.F. He has been acquitted of all the charges. A domestic enquiry was held against him. The order dated 28-8-84 passed by the JMFC, K.G.F. is a primary proof to show that there is no justification for the action taken by the management. He has put in about 6 years of unblemished service. Domestic enquiry ought not to have been held against him, when the management had initiated criminal proceedings on the same charge. The witnesses are practically the same. The findings of the Enquiry Officer are unreasonable and not based on proper appreciation

of evidence. The Enquiry Officer has not noticed the basic contradictions. This court can reappreciate the evidence. He could not have been present at the concerned place when he was in the underground mines at 5.30 p.m. on that day. Assuming that the allegations are true, without admitting, the same does not amount to any misconduct warranting dismissal. There is no theft of any property belonging to the B.G.M.L. The enquiry held against him is not in accordance with the law. List of witnesses and documents were not furnished to him before hand. He did not have reasonable opportunity to defend himself. Extenuating circumstances have not been taken into account. The punishment is excessive. The order of dismissal may be set aside and he may be ordered to be reinstated with all the consequential benefits.

3. The II party management has filed its counter statement and inter alia, it is contended as follows :

The II party was justified in dismissing him for serious act of misconduct, since being an employee of the watch and ward, he had indulged in unauthorised possession of company's material, viz gold bearing quartz pieces and pure nugget gold pieces. The misconduct amounted to theft and dishonesty and carrying on activities in the employer's premises without permission. He was tried by the I Class Magistrate, K. G. F. in CC No. 1665/80. His acquittal has no connection with the charges framed against him under the provisions of the standing orders. The proceedings before the criminal court are different from the proceedings in the domestic enquiry. In the enquiry, he was found guilty for grave acts of misconduct. The provisions of the Indian Evidence Act do not strictly apply to the domestic enquiry. The findings of the Enquiry Officer are based on evidence adduced by the management. The disciplinary authority has taken into account the past record and the gravity of misconduct and then passed the order. Domestic enquiry was conducted in accordance with the provisions of the standing orders. The evidence of the witnesses was corroborative. There was theft of the employer's property. The names of the witnesses were shown in the order for enquiry. A copy of complaint was enclosed to the notice issued to him. Every reasonable opportunity was given to him. The extenuating and mitigating circumstances were taken into account. The reference may be rejected.

4. In view of the said pleadings, one additional issue was raised as shown below.

“Whether the II party proves that it has held a domestic enquiry against the I party workman in accordance with law?”

5. It was taken up as a preliminary issue.

6. The II party management then examined 1 witness and got marked Exs. M-1 to M-12.

7. No evidence has been adduced for the I party workman.

8. By a considered order dated 26-10-88, it was held that the domestic enquiry held against him is in accordance with the law.

9. Parties were then called upon to adduce evidence, if any on the rest of the points and argue.

10. For the workman, a copy of the judgement of the criminal court has been produced and it is marked as Ex. W-1. No more evidence has been adduced by either party.

11. The parties have been heard.

12. My findings on the order of reference is as follows :—

The action of the management of M/s. Bharat Gold Mines Ltd. in dismissing Shri M. S. Zaimil Abdeen, Ex-General Duty Watchman was justified. He is not entitled to any relief.

13. In the claim statement itself, the I party workman has contended that since the I party workman was acquitted in CC No. 1665/80 on the file of the JMFC, K.G.F., the

II party should not have held the domestic enquiry and should not have dismissed him from service for the same acts.

14. The learned counsel for the I party has placed reliance on the case of R. J. Divekar Vs. Union of India & Others (1985 I L.L.J. Page 30). The facts of the reported case would show that the petitioner who was a driver in the Railways was acquitted in a criminal case instituted against him and then a departmental enquiry was held on the same subject matter. Under these circumstances, it has been observed that the enquiry cannot be held to be proper and the order of removal passed against him was liable to be quashed. In the case at hand, chargesheet was issued to him as per Ex. M-1 on 9-10-1980. Ex. M-3 dated 24-10-80 was the reply submitted by the workman. The management did not find that his reply was satisfactory. Thereafter, an enquiry was ordered against him as could be seen from Ex. M-2 dated 9-1-81. MW-1 Natarajan had been appointed as the Enquiry Officer. He commenced the enquiry on 28-1-81, as is obvious from the order, sheet Ex. M-4. Ex. M-5 is the evidence and proceedings recorded by the Enquiry Officer from 28-1-1981 to 30-4-82. After completion of the enquiry and taking into account the material placed before him and the submissions made before him, the Enquiry Officer gave his report dated 27-5-82, Ex. M-6. Then a second show cause notice was issued to the workman as per Ex. M-7 dated 9-6-82. Ex. M-8 is the explanation sent by the workman to the II show cause notice Ex. M-7. The disciplinary authority after taking into account the report of the Enquiry Officer and the explanation given by the workman and also examining his past record, dismissed him from service as per Ex. M-9 dt. 2-9-82. The workman has then filed his appeal dt. 18-1-83 as per Ex. M-10. Ex. M-11 dt. 24-3-83 is the order of the Appellate Authority rejecting his appeal. Ex. W-10, the copy of the judgement filed by the workman of CC 1665/80 on the file of the II Additional Judicial Magistrate I Class, K.G.F. The judgement is dated 28-8-1984, long after the date of the rejection of his appeal Ex. M-11 dated 24-3-83. Since it is not a case where the management desired to issue a charge, hold an enquiry and dismiss him after the acquittal by the criminal court, the principle laid down in the authority has no bearing.

15. The learned counsel for the I party has then referred to the case of Kusheshwar Dubey Vs. M/s. Bharat Coking Coal Ltd. (AIR 1988 Supreme Court Page 2118). The authority enunciates a principle that there could be no legal bar for simultaneous proceedings being taken against the delinquent employee against disciplinary proceedings are initiated. However, it has been further stated that there may be cases where it would be appropriate to defer disciplinary proceedings awaiting disposal of the criminal case and that in the latter case, it would be open to the employee to seek an order of stay or injunction from the court. It has been further observed that depending upon the facts and circumstances of a particular case; in that event, it would be open for the court to arrive at a finding whether there should or should not be such simultaneity of the proceedings. It has been further observed it is neither possible nor advisable to evolve a hard and fast straight-jacket formula valid for all the cases and of general application, without regard to the particularities of the individual situation. As has been observed by me, the disciplinary proceeding against the workman had been already completed before the workman was tried by the criminal court and a judgement of acquittal was passed. There is nothing in the two authorities cited for the I party that if a workman is acquitted in a criminal court, the earlier disciplinary proceedings held by the management stands vitiated or does not carry any value or that the findings of the said proceedings should be set aside.

16. In the commentary on page 876 of the Law of Industrial Disputes by O. P. Malhotra, 4th edition, Vol. II, it has been stated that in the case of the management of W.S. Insulators of India Limited Vs. Mohammad Moosa (1979 LAB. I.C. page 102), the management had dismissed a workman pending criminal proceedings against him after holding a fair and proper domestic enquiry and without reference to criminal proceedings but subsequently he was

acquitted in the criminal court and on a reference to the Tribunal, the dismissal was set aside on the ground that he had been acquitted by the criminal court. The Hon'ble single judge of the High Court held that the Tribunal had no jurisdiction to sit in appeal on the enquiry and it was not permissible to the Tribunal for taking into account the evidence in the criminal court which was not the material available at the domestic enquiry. The said commentary thus indicates that there is absolutely no force in the contention of the I party that when once a workman is acquitted by a criminal court, the management cannot insist upon the order of dismissal passed by it already.

17. The learned counsel for the I party then contended that the chargesheet does not allege that the property concerned was the employer's property, that the witnesses examined for the management have given contradictory evidence, that no manazur witness was produced in the enquiry and thus the report of the Enquiry Officer is not sustainable.

18. After stating the provisions of the standing orders, the management alleges as follows in the show cause notice i.e. chargesheet, Ex. M-1.

"In that it has been reported that on 28-9-80 at about 5.15 P.M. when the police party searched your house No. 35, Oorgaum Watchmen Lane in your presence, you were in possession of one visible GBQ piece and pure nugget gold pieces weighing 13 gms and 1 grain, which amounts to your possessing Company's property unauthorisedly under S. O. 15(b)(23).

You being a detective watchman, your possessing the Company's gold as stated above amounts to theft or abetment of theft, fraud or dishonesty, in connection with the employer's business or property under S.O. 15(b)(34). Your possession of Rs. 2,150 at the time you were caught by the police, with GBQ piece and pure nugget gold pieces amounts to your indulging in purchase and sale of gold and thus you were carrying on the employer's premises activity not connected with the employer's work under S.O. 15(b)(28).

A copy of the complaint by Shri N. Muthuswamy Naidu, G. D. Supervisor is herewith enclosed".

It has been specifically stated in the chargesheet that the aforesaid property is the property of the Company and that it is Company's gold, that his possession of the said property amounted to possession of the Company's property. In the explanation given to the chargesheet, Ex. M-1, the workman has contended in Ex. M-3 dated 24-10-80 that he is innocent that the police have concocted a false case against him to harass him and since the criminal court is seized with the matter, the disciplinary proceedings may be dropped. As observed earlier, the management did not consider it to be expedient to either drop or stay the disciplinary proceedings, but appointed an Enquiry Officer and proceeded with the proceedings. Before the Enquiry Officer, the workman, on 30-4-82, was called upon to state whether he had any defence witnesses and he said that he had no defence witness and thereafter he has given his own evidence. His evidence has been recorded on pages 22 to 24 of Ex. M-5. He has stated therein that on 28-9-80 at about 5.30 p.m., he reached his house at Ennodi watchman line and before entering into his house, he found Rajagopal, (PSI) and other police people sitting and then he thought that something had happened. He proceeds to state that he went inside his house, asked his wife and she told him that she did not know anything. He then adds that he came out and asked the policemen as to what the matter was and Rajagopal told him that there was nothing and asked him to accompany him, after changing his dress. According to the workman, then he changed and came out, whereupon, the Sub-Inspector asked him as to whether any materials were kept in his house to which he stated there was nothing. He then proceeds to say that thereafter he called his wife, asked her whether she had any money with her, for which she said that she had kept some money for his sister's

marriage and then she brought the money and gave it to him. He further states that the policeman took him and the money to the Oorgaum police station, retained him for three hours and after Muthuswamy Naidu and other two watchmen came there, he was let on bail. It is nowhere stated by him that he understood the chargesheet to mean that the company had called upon him to explain about the possession of the property belonging to somebody else and not of the company. Ex. M-8 dated 13-7-1982 is the reply given by him for the second show cause notice. What has been mainly contended in the said explanation Ex. M-8 is that the mahazar was a got-up document, no gold bearing articles of mercury were found in his house. Nowhere it has been contended that the property in question was not the company's property. Ex. M-10 is the memorandum of appeal filed by him. Therein also there is no contention that the concerned property is not the company's property. Before this Tribunal, the workman had ample opportunity to present himself and give his evidence. He has not chosen to do so. Even before this court, there is no specific statement by him that he understood the chargesheet in a manner that the company had called upon him to explain the possession of the said property without telling him that it belonged to the company. The contention now raised is therefore not sustainable.

19. In the context that the domestic enquiry has been held to be valid and in accordance with law, the only thing that requires to be examined is whether the findings are perverse, as alleged by the I party. In the claim statement, it has been contended that the findings of the Enquiry Officer are unreasonable, not based on evidence and there is no proper appreciation of evidence and probabilities. It has been further alleged that the Enquiry Officer has not carefully noticed the basic contradictions. It has been then urged that this court can reappreciate the evidence, assuming that the enquiry is held to be valid. The only specific ground stated for not accepting the findings of the Enquiry Officer is that at about 5.30 p.m., the workman was not in his house and there was no theft of any property belonging to B.G.M.L.

20. Perversity has two tests. The first test is that to examine whether the finding is not supported by any legal evidence at all. The second test is that whether on the basis of the material placed on record, no reasonable person could have arrived at the findings complained of. The Tribunal would not be justified in characterising the finding recorded in the domestic enquiry, unless it can be shown that it is not supported by any evidence or that it is entirely opposed to the whole body of the evidence adduced before it. On page 875 of the Law of Industrial Disputes by O. P. Malhotra, 4th edition, II Volume, it has been stated that if there is evidence on record, however, commendous it may be, if it is acceptable and if could be relied upon, then the conclusion arrived at in such a situation cannot be termed as perverse. If the conclusion of the Enquiry Officer is reasonable, then the Tribunal cannot interfere with such a decision on a mere obtruse or abstract basis. Pointing to the case of *Lord Krishna Textile Mills Vs. its workmen* 1961 (1) L.L.J. Page 211 it has been stated by the learned author that it is essential to bear in mind the difference between a finding which is not supported by any legal evidence and a finding which may not be supported by sufficient evidence or may be based on inadequate or unsatisfactory evidence. On page 876, the learned author states that in deciding a question whether a particular conclusion of fact is perverse or not, the Tribunal would not be justified in weighing the evidence for itself and determining the question of the perversity of the view arrived at by the Enquiry Officer in the light of its own findings on the question of fact. It has been further stated that the findings of the domestic tribunal cannot merely be brushed aside unless they are shown to be based on no evidence. The contention of the learned counsel for the I party that this tribunal can reassess, reappreciate the evidence adduced before the Enquiry Officer and arrive at its own conclusion, as if it is a court of appeal, is not supported by any authority.

21. The Enquiry Officer has in all examined 7 witnesses and in addition there is the evidence of the workman himself on his side. No argument has been advanced before me that the oral evidence of any of these witnesses was

not legally admissible evidence. In the proceedings of 26-3-82, the original mahazar dated 28-9-80 prepared by the police was brought on record by the Enquiry Officer. A translator copy of the kannada mahazar was also taken on record. The proceedings further show that the workman was asked whether the properties enumerated in the mahazar and then shown to him and also the cash and other particulars have been stated correctly. He has stated that the contents of the mahazar that the materials such as gold, G.B.Q. pieces, mercury were found in his house is not true but that a cash of Rs. 2,150 was taken and it was kept by him for some marriage purpose. The original mahazar, Ex. M-1 and the translation Ex. M-2 were made available for the examination of the workman and his assistant and it cannot be said that the Enquiry Officer committed any error in admitting the said documents. The true copy certified by the Police Sub-Inspector, Oorgaum and marked by the Enquiry Officer as Ex. M-1 is marked in this Tribunal as Ex. M-12. A copy of the original complaint given by the 1st witness Muthuswamy was enclosed along with the chargesheet and it cannot be said that the Enquiry Officer committed any error in admitting the said document. It was not pointed out to me for the I party as to how the findings of the Enquiry Officer, Ex. M-6 can be termed as perverse. On the ground that he has recorded his findings on no evidence or on evidence which was not legally admissible.

22. The matter then requires to be examined whether the findings, Ex. M-6 can be termed as perverse for the reason that no reasonable person could have arrived at the same on the basis of the material placed on record.

23. The chargesheet, Ex. M-1 points out that he was charged with the acts of misconduct as defined in Standing Order No. 15(b) (23) which deals with unauthorised possession/use of any property, machinery, buildings or land belonging to the company. Clause 28 which deals with the carrying on alone or with another or others, on employer's premises of any work or activity not connected with the employer's work without the previous sanction of the employer and Clause 34 deals with theft or abetment of theft, fraud or dishonesty in connection with the employer's business or property, including mining materials, as defined in the Mysore Mines Act.

24. Since Clause 34 refers to mining material as defined in Mysore Mines Act, it requires to be examined as to what is the definition of the mining materials as shown in the said Act. Mining material has been defined in Section 3 (6) of the said Act. The relevant portion is as follows :

(6) "Mining material" includes :—

- (a) alluvial gold, gold ores, native gold, precious stones and other rocks and minerals of value;
- (b) gold amalgam, sponge gold, zinc precipitates, slags, concentrates, tailings residues and other valuable mineral products of mines in any stage of treatment or extraction; and mercury, potassium cyanide and other chemicals, apparatus, tools marked with the distinguishing mark of the mine, and materials used in such treatment and extraction;

The aforesaid definition thus shows that the properties enumerated in the chargesheet, Ex. M-1 such as gold, GBQ pieces, pure nugget gold pieces and mercury etc., were mining material. As per Section 5 of the said Act, without the written permission of the Mining proprietor or Superintendent, no person can have a mining material. Section 6 of the said Act states that any person found to be in possession of the mining material without the written permission of the mining proprietor or Superintendent and unable to prove that his possession of the same was obtained in a lawful manner, is liable to be convicted and punished as shown in Section 13. Section 13 states that the punishment shall be a fine of Rs. 500 or imprisonment which may extend to one year. On going through the definition of mining material in Section 3 (6) and section 5 (6) and (13), it would be obvious that the burden of proving that

the possession of a mining material is lawful will be on a person with whom the possession stands proved. The contention of the learned counsel for the I party that the management did not state that the property belonging to the management in the chargesheet, Ex. M-1 done not stand to scrutiny, in view of the aforesaid provisions of the Karnataka Mining Act.

25. Now, it requires to be examined how far the report of the Enquiry Officer stands the second test shown above.

26. The witnesses examined before the Enquiry Officer have been shown as PW1 PW2 etc. so as to distinguish them from the witnesses examined before this Tribunal who have been shown as MW 1 etc.

27. PW-1 Muthuswamy has stated before the Enquiry Officer that on being directed by the Security Officer, he went to the house of the workman on 28-9-80 at 5.10 p.m. and found the police party and other watchmen such as 62 Perumal, 8 Annamalai, 183 Samraj and some other civilians. He then found that head constable Gabriel had detected a packet and opened the same at the door step of the house of the workman and it contained gold nugget. There was also a cloth bundle and it contained GBO pieces. Then there was a bottle containing mercury in another packet and a sum of Rs. 2,150 was found. He further indicates that the gold smith was secured, he weighed the material then a mahazar was drawn up, the cash was returned to the workman and properties after putting the signatures and seals were taken by the police. The material question put to him is whether he can say that these materials were recovered from the house of the workman. The witness has admitted that he cannot say. Admittedly, he is not an eye witness.

28. PW-2 Annamalai is a General Duty watchman No. 8. According to him, he was called by the police to the house of the workman Zaimil Abdeen, when he was taking his goats to his house. He has then stated that as soon as he reached the house of the workman, he saw three packets and that then a goldsmith was called, the packets were opened, and they were weighed. In the third packet, there was a match box and then there was a bottle containing some liquid of white colour. To the material question whether he knows wherefrom those packets were taken, he has stated that he did not know.

29. The third witness examined for the management is Perumal, General duty watchman 62. It appears in his evidence that on 28-9-80, two constables called him from his house and then he found a crowd of about 100 people and when he reached the house of the workman, Zaimil Abdeen, he found three packets and when they were opened, there were gold colour powder, GBO pieces and a small bottle containing mercury. He adds that police wrote a document and he signed it. In the cross-examination, he states that the mahazar was written in Kannada. To a pertinent question whether he knows from where the packets had been brought, he states he does not know.

30. PW-4 is the Foreman of Ventilation department by name Selvam. According to him on 28-9-1980 he was called by the Police Superintendent (henceforth called as PSI) to the house of the workman Zaimil Abdeen and when they went there, the PSI called out Zaimil Abdeen from outside, then the workman came out and thereafter the PSI explained to him that there was a complaint against him that he was having gold belonging to the mines and if he had any such material to return the same, but he told that he had no such thing and that his house may be searched. The witness then adds that the PSI asked the Head Constable Gabriel and Ex. President Arjunan to remove their clothes and asked the other witnesses such as Upakarma, Krishnan, Perumal and Samara etc. to check up the said Gabriel and Arjunan. The PSI further asked Zaimil Abdeen, the workman to check them and accordingly all of them checked them. The witness then proceeds to state that when the PSI asked the workman whether his house can be searched and he agreed whereupon Gabriel and Arjunan went inside and searched the house. He then adds that they brought one worn out plastic bag toys, one super 10 mark match box. On opening

the said match box, it was found that there was gold in a packet. There was another packet and there were quartz pieces, another packet was found that there was small bottle containing mercury. His evidence then runs that a goldsmith was brought, he weighed the material, a mahazar was drawn up, a sum of Rs. 2,150/- was found in his house but it was returned to the workman and that the materials were taken by the police after due signatures and seals etc. The witness has emphatically stated in the cross-examination that he had accompanied the police before they had reached his house. There is nothing else in the cross-examination of PW-4 Selvam to discard his evidence.

31. PW-5 Upakarma is a maistry of Gbalconda shaft. The evidence of Upakarma is on the similar lines of PW-4 Selvam. The cross-examination of PW-4 Selvam and PW-5 Upakarma shows that both of them are the residents of NT block and it is shown that it is of the same locality. PW-5 Upakarma has been asked in the cross-examination as to who had got the packet containing the notes and he has stated that the head constable had brought it. Since it is not denied, may, that the workman admitted that the cash of Rs. 1,250/- belonged to him and that it was brought out from his house and that he has received back the said amount on the spot, they go to show that there is all the truth in the case put forth by the management that on the evening of 28-9-1980 the house of the workman was searched. I do not find anything else in the cross-examination of PW-5 Upakarma to disbelieve him.

32. PW-6 Samraj is watchman No. 183. His evidence is to the effect that he was called on that evening by the police and he went to the house of the workman Zaimil Abdeen, he heard the Sub-Inspector telling the workman that he had received information and his house will be searched. He further states that the PSI asked him to search the police who were to go inside the house and search but he told the PSI that somebody else may be asked to do so. He then adds that some two other watchmen searched two persons and the said persons went inside the house and searched the house and brought out certain things. He stated that in the meanwhile the PSI had asked him to go and get Mr. Narayan Naidu and by the time he returned, he found that a gold like thing was in a paper and a bottle containing some medicines and some currency notes. He then adds that the policeman wrote something and he signed it. In the cross-examination, a question has been put to PW-6 Samraj as to who had entered the house of Zaimil Abdeen. The question itself suggests that on that evening the house of the workman Zaimil Abdeen had been searched. In the cross-examination the witness has made it clear that one of the persons who had entered the house was Arjunan. He has further made it clear that the gold property was of 10 grams and the mahazar was in Kannada. I do not find anything in the cross-examination of PW-6 Samraj to make him untrustworthy.

33. PW-7 Jayaram is the supervisor. It appears in his evidence that on that evening seeing the crowd in front of the house of the workman, he went there and he was told that the house of the workman was being searched.

34. PW-8 is the assayer and he has stated that the sealed packets were brought to him, that the seals tallied with the sample seals, that he examined the first packet and it contained GBO pieces of 1.67 grams and on due examination, he valued the gold at Rs. 229.64. Then he examined the second packet and it contained 10.15 grams of GBO pieces and it was valued at Rs. 1,640.03 P. and in the third packet there was a polythene bottle containing 32 grams of mercury. The workman has not challenged his evidence on any point. The witness has stated that the material was concerned in the case of the workman Zaimil Abdeen.

35. In order that further opportunity should be made available, so that the copy of the mahazar, Ex. M-12 may be compared with the original mahazar marked in CC No. 1665/80, the original file was summoned and it has been produced. It has been taken on record. In spite of making the said file available, no contention has been raised for the I party that Ex. M-12 differs on any point from the original

mahazar marked as Ex. P-1 in the criminal case. Ex. W-1 the judgement produced by the workman shown the list of witnesses and documents produced before the criminal court. Since adequate opportunity was given to the workman to state about the mahazar marked by the Enquiry Officer, I find that there is no force in the contention that the Enquiry Officer should not have relied upon the copy of the mahazar, Ex. M-12. Secondly the mahazar Ex. M-12 was produced by the police along with the covering letter of the Police Sub-Inspector and it has been certified by the PSI as the true copy. There can be no dispute that the original mahazar was still required by the Criminal Court and it is too much to expect from the management that they should have produced the original mahazar before the Enquiry Officer.

36 The Enquiry Officer has discussed the evidence of these witnesses on pages 1, 2 and 3 of his report. From the middle of page 3, he has analyzed the evidence with reference to the charges. He has taken into account the fact that the workman has himself admitted that the cash of Rs. 2,150/- was taken from his house and he has discussed as to how the case put forth by the workman that the other properties were not found in his house but only the cash was given out by his wife cannot be accepted. He has then discussed as to how the statement made by the workman that Adishivam, Subberettinam, Senuel and Krishnan have falsely implicated him cannot be believed. Looking at the material placed before the Enquiry Officer, as depicted above, I find that it is not a case where no reasonable person would not have arrived at the conclusion that the workman was guilty of the charges. In my view, there is no perversity in the findings recorded by the Enquiry Officer.

37. There is no case of either victimisation or indulging in any unfair labour practice by the management.

38. The learned counsel for the II party has placed before me the authority of T. Secralan Vs. Presiding Officer, II Additional Labour Court and Others (1986 II LLJ page 85). It cannot be forgotten that the I party workman was working in the Security Department and it was his duty to protect the property of the company. It is manifest from the record that he has been dishonest in connection with the Employer's property. The possession of mercury with him suggests that there was all the force in the imputation of the management that he was engaged in an activity connected with the employer's work on the employer's premises, since he was in the Watchmen's quarters of the management. Under the facts and circumstances of the case, I do not find that the provision of Section 11-A can be invoked. In my view the punishment of dismissal is quite reasonable.

39. In the result, an award is passed to the effect that the management of the Bharat Gold Mines Ltd., was justified in dismissing the services of Shri M. S. Zaimil Abdeen, Ex-General Duty Watchman, Watch & Ward Establishment and that he is not entitled to any relief.

(Dictated to the Personal Assistant, taken down by her, got typed and corrected by me.)

B. N. LALGE, Presiding Officer

[No. L-43012/23/85-D. II (B)]

का.प्र. 391 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मंत्रिमं सेलर जनरलस लि. के प्रबंधन में सम्बद्ध नियोजकों और उनके कर्मचारियों के बीच, प्रमुख में निम्नलिखित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधि-करण, बंगलौर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 31-1-89 को प्राप्त हुआ था।

S.O. 391.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Bangalore as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Mysore Minerals Limited and their workmen, which was received by the Central Government on 31-1-89.

306 GI/89—6

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT BANGALORE

Dated 25th January, 1989
Central Reference No. 117/87

I PARTY

Shri R. A. Masuthi
Rep. by General Secretary
VS.

Bellary Dist. Mines
Wagon Loaders and
General Worker's Union
Hospet 583 201
Bellary Dist.

II PARTY

The Chairman and
Managing Director
M/s. Mysore Minerals Ltd.
39, M. G. Road,
Bangalore-1.

APPEARANCES :

For the I Party Shri U. B. Theertha Rao, General Secretary Bellary Dist. Mines Wagon Loaders & General Workers' Union.

For the II Party Shri Somashekar—Advocate.

AWARD

By exercising its powers under Section 10(1)(d) and (2A) of the I.D. Act, the Government of India, Ministry of Labour, has made the present reference on the following point of dispute vide its order No. L-26012/39/85-D. III(B) dated 12-6-1987.

POINT OF REFERENCE

"Whether the action of the management of M/s. Mysore Minerals Limited in relation to their Jambunathana-halli Iron Ore Mines, Hospet, Bellary Dist. in keeping the order of promotion dated 3-8-1982 issued to Shri R. A. Masuthi as Supervisor in abeyance and not paying the appropriate salary and other benefits is justified? If not, to what relief the workman is entitled?"

2. II party union has its claim statement and inter alia, it is stated as follows :

Shri R. A. Masuthi is a graduate of Karnataka University. He has obtained the degree in 1975. In 1977, the II party appointed him as a supervisor. Among other things, his duties are to supervise the loading and unloading work, sending of daily reports and maintaining of the prescribed registers. He has worked in that capacity in Supa from 1977 to 1983. In 1983, he was transferred from Supa to Dandeli. In 1982, letters were given to him confirming that he was working as supervisor. He was not being paid the appropriate salary which was paid to other supervisors. He was representing about it to the management. He requested them to place him in a better grade and category and pay the appropriate salary. On 3-8-82, the II party issued an order permitting him as daily rated supervisor on consolidated daily wages of Rs. 13.50 with effect from 1-8-1982. It was only confirmation and there was no change in his designation and wages. On 18-6-1983, he was transferred from Dandeli to Hospet. He joined at Hospet as a supervisor and worker as such till the end of 1983. In the first week of January 1984, he was asked to work as a watchman. He refused to obey the illegal orders. He raised an industrial dispute. On leading that

he had raised a dispute, he was physically knocked out of the work spot and was warned by the watchman that he should not enter into the mines. The II party has tried to manoeuvre to raise a plea that he has himself abandoned the service. The attendance register of creche shows that he has worked as a supervisor. Subsequently, the II party contended that it has kept in abeyance the order of promotion. It is alleged that the order of abeyance was issued 52 days after the order of promotion. The said contention is false and motivated. The order of promotion becomes effective soon after it was issued. The action of the management is in violation of the Section 9A of the I.D. Act. The denial of promotion amounts to punishment and since it is against the principles of natural justice, it cannot be valid. The workman has received the benefits of the promotion, until he was prevented from attending to his work. No such order of abeyance was served on him. The order does not state any reason. It does not show the period of abeyance. It is an arbitrary act. Hence, it is prayed that the order of abeyance may be held as null and void. That the promotion is still in operation, and to direct the management to reinstate him and to pay a sum of Rs. 92,270 as back wages, damages and costs.

3. The II party has filed its counter statement and inter alia, it is contended as follows :

Shri Masuthi was appointed as a watchman on 1-3-1977 purely on casual basis, on daily wages of Rs. 2.50 at the Supa mining project. Hence, no appointment order was issued to him. He was posted as a watchman at Kurundi stock yard to keep a watch on the cre and he was also asked to look after the transportation of ore from Kurundi to Bellikere port yard. He was the only workman at Kurundi stock yard. The Unit Officer had by oversight and mistake addressed some memoranda to him, showing his designation as supervisor. He cannot claim as a supervisor on such memoranda. He has shown himself as a watchman in all his letters etc. from 1977 till 1984. In his representation dated 13-1-83, he has claim that he is only a watchman and not a supervisor and he has been paid salary till 9-1-84 as a watchman. He performed the duties of a watchman. He was paid wages on the daily rated basis. The initial action for promotion of Masuthi was under consideration by the management. The move made by the management to promote him as a supervisor from the post of watchman was contrary to the cadre and recruitment rules of the company and as soon as the mistake was noticed, the order of promotion was kept in abeyance. A watchman, can, at the best be promoted as a head watchman and not as a supervisor as per the cadre and recruitment rules. He was transferred from Supa to Jambunathanahalli iron ore mines in the interest of the Company's work by an order dated 14-5-83. He reported to duty at Jambunathanahalli as a watchman on 25-6-1983. By a letter dated 24-9-82 his promotion was kept in abeyance. He worked as a watchman till 8-1-84 without any protest. From June 1983 to January 1984, he was working as a watchman in the creche. By a letter dated 6-1-1984 he was directed to work as a watchman in the mines, but he refused to obey the orders of the mines manager and remained absent from 9-1-1984. It is not true that he was forcibly sent out. There was no misrepresentation made to him, as alleged. He was informed about his promotion wrongly since it was contrary to the cadre and recruitment rules and as soon as the mistake was noticed, the order was kept in abeyance. The management cannot be compelled to do a thing or an act against the said provisions. Any such promotion, contrary to C & R rules will be illegal. The irregularity requires to be rectified at the earlier possible time. He is not eligible for the said promotion. No right has accrued to him. The claim is opposed to law. His unauthorised absence from work is illegal. He is not entitled to any back wages. It is false that he was appointed as a supervisor from 1977 itself. It is false that he discharged the duties from 1977 as a supervisor. The five documents produced by the I party are not issued by the Project Manager. They are manipulated documents. Only the Project Manager is competent to designate an employee. No other officer has any power to designate an employee. His claim that he was not paid supervisor scale is not justified, since he has worked only as a watch-

man. Till 9-1-1984, he has never claimed that he was not paid the supervisor's scale and pay. His contention that the creche attendance shows him as the supervisor is not material, because he was himself maintaining the same and he has manipulated it. The burden lies on him to demonstrate that he was eligible to be promoted as a supervisor from the cadre of a watchman. Till today the II party has not promoted any watchman as a supervisor. The II party has a right to correct any mistake and to keep the order in abeyance because the said action was in violation of the rules and procedure. The present dispute has nothing to do with the other facts dealing with his refusal to obey the transfer order dated 6-1-84 and to work as a watchman in the mines or to deal with his unauthorised absence from 9-1-84. He has raised a separate dispute, alleging refusal of work from 9-1-84 and termination of his service, but it has been rejected by the Central Government on 21-11-1984. Even before the Conciliation Officer, he refused to report for duty. The II party has been ever willing and ready to provide him work as a watchman at the mines, but he has disobeyed and absented from work himself. Even now, the II party is ready and willing to give him work as a watchman. Since the II party has not refused him employment, the question of reinstatement, back wages etc., does not arise. He could have continued to work as a watchman and prosecute his case regarding his promotion. The prayers made by him are beyond the ambit and scope of the order of reference. His claim for Rs. 92,270 being back wages is beyond the scope of the reference. He cannot claim any reward for his unauthorised absence. Necessary disciplinary action will be taken against him for his continued unauthorised absence. He has no individual right under section 2A of the I.D. Act. The present dispute is one under section 2(k) of the I.D. Act. It requires to be supported and authorised by a majority of the workman of the II party. It is not supported by a majority of the workers of the II party. Majority of the workmen of the II party are not the members of the I party union. The following two issues may be raised as preliminary issues

- (a) Whether the I party proves that the dispute is supported by majority workers of II party as required under Section 2(k) of the I.D. Act.
- (b) Whether the I party Union has locus standi and authority to prosecute the present dispute.

The reference may be rejected.

4. In view of the said pleadings, one additional issue was raised as follows :

"Whether there is proper espousal and whether the reference is maintainable?"

5. For the management, two witnesses have been examined and Exs. M-1 to M-75 have been got marked.
6. For the I party, the workman himself has been examined and Ex. W-1 to Ex. W-40 have been marked.
7. The counsel for the II party has been heard.
8. The representative for the I party has filed his written arguments.
9. My findings on the additional issue and the point of reference are as follows :

ADDITIONAL ISSUE

10. The I party has not proved that there is proper espousal.

POINT OF REFERENCE

11. For the action of the management of M/s. Mysore Minerals Limited in relation to their Jambunathanahalli Iron Ore Mines, Hospet, Bellary District in keeping the order of promotion dated 3-8-1982 issued to Shri R. A. Masuthi as Supervisor in abeyance for an indefinite point of time, there was no justification, but since proper espousal is not proved the workman is not entitled to any relief.

REASONS

ADDITIONAL ISSUE NO. 1

12. In Para 31 of the written arguments dt. 9-12-88 (henceforth called as the 1st argument), the learned representative for the I party has stated that the I party has not adduced any evidence to show that the I party union does enjoy confidence of substantial section of the workmen or that the I party union is not backed by considerable number of the workmen of the II party or that it has no authority to sponsor the dispute. It has been contended that the burden of proving lies on the party that makes the allegation and therefore the burden of proving that issue was on the II party. It is admitted in para 1 of the said written arguments that the present dispute is raised under section 2(k) of the I.D. Act. Since it is the I party union which contends that it has got the representative character, it has got the right to espouse the cause of the workman. It is for the I party to prove the said issue.

13. In Para 32A of the 1st written argument, the I party has stated that it has the support of 108 workmen out of total working force of 188 workmen, and in that connection the evidence of WW-1 Masuthi in Para 17 has been relied upon. In para 17 of this evidence, WW-1 Masuthi has stated that at that time there were 188 workmen in the II party mines and about 108 workers were the members of the I party union. He has further stated that it is the only union in the II party and he is a member of the same since August 1984. In para 100 of his evidence, it has been suggested to him in the cross-examination that including the workman WW-1 Masuthi, no workmen of the II party is ever a member of the I party union. It is also suggested to him that the I party has fabricated the receipts at Exs. W-15 to W-30. WW-1 Masuthi has denied the suggestions. As regards the counterfoils the receipts at Exs. W-15 to W-30, the I party union has not put forth any convincing explanation. WW-1 states in para 100 that he does not know about the said counterfoils. In para 102, it has been further suggested that not a single workman of the II party mines is ever interested in the dispute raised by him or has ever supported his case. In para 103 of his evidence WW-1 Masuthi pleads ignorance whether any joint representation by any group of workman of the II party was ever given that he was wrongly asked to work as a workman etc.

14. The aforesaid evidence of WW-1 Masuthi and the receipts produced by him at Exs. W-15 to W-30 do not establish that the I party union has not the representative character, that appreciable number of workmen or at least some workman of the II party are its members or that the dispute has the backing of a appreciable number or at least some workmen of the II party. In the absence of such evidence, it would be difficult to hold on the basis of the said evidence that the dispute is a one under section 2(k) of the Act and that there is proper espousal. In para 32 of the 1st written argument, it has been contended that the I party union has filed a written list containing particulars of 108 workers in Form 'F' as per Regulation 14A(1) of the Karnataka Trade Union Regulation 1958. The learned representative for the I party union has not pointed out to me that any document bearing the seal of the Union and signed by the General Secretary of the Union becomes admissible in evidence. Item 3 of the documents filed along with list dated 26-9-88 is in 12 sheets. The learned counsel for the II party contended that production is no proof of the document and it has not been exhibited and that it does not prove that 108 workmen of the II party mines were the members of the I party union as contended by the I party. There is nothing in Para 32 of the written argument to show as to why the original register has not been produced. No explanation has been put forth as to why counterfoils of the subsequent receipts of the workman WW-1 Masuthi and the rest of 107 workmen have not been produced. It has not been explained satisfactorily as to how these 12 sheets shown at Sl. No. 3 of the list dated 26-9-88 are by themselves admissible without the evidence of any office bearer of the union. The first document filed along with that list is a letter by the Registrar of Trade Unions, Bellary Division, Davanagere. It shows that the I party union has been registered. The second document is dated 21-5-81. It is a certificate of registration. They are original documents. Even though, the I party has not got them marked, as

exhibits, it may be considered as a mistake and at the best they prove that the I party is a registered union. It has been contended in para 32 of the 1st written arguments that a true copy of the unanimous resolution of the General Body held on 27-8-84 has been produced along with the said list dated 26-9-88 and it proves that there is proper espousal. The said document is shown at Sl. No. 10 of the said list. Nothing prevented the I party from producing the original resolution book and showing the number of members present at the said general body meeting. It has not been demonstrated as to how a true copy signed by the General Secretary is admissible in evidence. The learned counsel for the II party again contended that the said document is not admissible in evidence, that it has not been marked that it does not prove that appreciable number of the workman of the II party were the members of the I party union or that they ever attended any such central Body meeting or that they ever supported the case of the WW-1 Masuthi. In my opinion, mere production of a true copy of a document said to be the resolution of the General Body meeting does not prove proper espousal. In para 32 of the first written argument, it has been stated that the I party union has the locus standi and the authority to prosecute the present dispute, since it has been shown that the workman WW-1 Masuthi had become the member since August 1984.

15. In Para 6 of the written argument dated 14-12-1988 (henceforth called as the second written argument), it has been contended by the I party that the particulars that 108 workmen of the II party are the members of the I party union is given in a statutory form under Regulation 14A(1) of the Karnataka Trade Union Regulations and that the same has been certified by the trade union, to which the workman belongs and that it shall have to be accepted as a genuine one. It has been further contended that unless it is disputed that it has not been certified to be a true copy by competent authority, the said contention cannot be sustained. It is the I party union which intends that this Tribunal should admit the said document as admissible evidence. The I party shall have to convince the Tribunal, showing the relevant provision of law as to how it is admissible in evidence. It has not been shown that if the document is certified as a true copy by the General Secretary of the Union, it becomes admissible in evidence without further proof. No provision of the Indian Evidence Act has been pointed out to indicate that these sheets shown at Sl. No. 3 of the list dated 26-9-1988 are admissible in evidence only for the reason that they bear the rubber stamp of the union and signed by the General Secretary. In para 7 of the written arguments, it has been contended by the I party that there is no requirement of law that the counterfoils of the subscription should be produced to show the membership. It is not the question of law, which is involved but in order to prove that the workmen of the II party have been the members of the I party union, the counterfoils would be better piece of evidence. Instead of explaining the non-production, the I party has put forth a contention that there is no legal requirement for production of the same. As adverse inference arises against a party for non-production of a material document and especially so when there is no convincing explanation for its non-production.

16. In Para 8 of the second written arguments it has been stated that the present dispute has been supported by 108 workman out of 188 workmen of the II party. Since, it has been held that the said 12 sheets are not admissible in evidence and that they have not been marked, the said contention does not stand to scrutiny. The bare evidence of WW-1 Masuthi is interested testimony. It has been neither contended nor proved that he was ever an office bearer of the union.

17. In para 8 of the second written argument, it has been stated that a true copy of the general body Resolution No. 232 dated 27-8-84 has been produced and the contention of the II party that it is not admissible is not correct, for the reason that the General Secretary has signed it to be true. It has been stated that it is in accordance with the constitution of the Union and as per the Trade Unions Act 1926. In para 10 of the second written argument, it has been contended that the provisions of the Evidence Act are not applicable, since this Tribunal is not a civil court, as defined in the Code of Civil Procedure and that the said documents

are admissible in evidence. It has been further stated that after examination of these documents, the II party cannot raise these objections and that the documents are admissible. Merely, because the provisions of Indian Evidence Act cannot be strictly applied for the proceedings of this Tribunal, it does not follow that any piece of document can be admitted in evidence without proper proof. It has been then contended that if the II party was so serious about the genuineness of these documents, it should have gone through the concerned documents and after going deep into the matter, the II party cannot question the genuineness of the same. At no point of time, the II party has ever conceded for making these documents as exhibits. It is for the Tribunal whether to allow for the production of a certain document or not. Because a certain document has been permitted to be produced, it does not mean that it has been already admitted in evidence.

18. In para 11 of the II written argument, it has been stated that all the original documents of the aforesaid evidence are not available with the I party that they are in the central office of the All India Trade Union Congress, New Delhi and therefore they cannot be produced immediately. I cannot, but reiterate that no office bearer of the Union has been examined to vouchsafe to these contentions. Nothing prevented the I party from seeking the assistance of the Tribunal for summoning the said document from the AITUC office, New Delhi.

19. Regulation 14A of the Karnataka Trade Union Regulations 1958 deals with the maintenance of records by the trade unions. It shows that the particulars regarding applications for membership, register of membership and subscriptions shall be maintained in Form 'F'. Regulation 14A further states that minutes book to record the proceedings of all the meetings should also be maintained. Item No. 7 shows that a file of vouchers should be maintained. There is no provision in the said regulations that any document certified to be a true copy by the General Secretary should be simply admitted in evidence by a court of law. Similarly, there is nothing in the Trade Unions Act 1926 that if a document maintained by the Trade Union is certified to be a true copy by the General Secretary, it should be admitted as though it is a public document. The learned representative for the I party does not point out to any specific section or regulation of the said act or regulations. In my view, the submissions made in paragraphs 6 to 11 of the second written arguments are not convincing to hold that the aforesaid documents are admissible in evidence. It is true that the preponderance of judicial opinion is that the proceedings before the industrial tribunals are of a quasi-judicial nature and that the strict rules of the Indian Evidence Act are not applicable. It only means that the rules regarding acquiescence, estoppel, waiver and of the like nature will not be applicable. The fundamental principles regarding admissibility of evidence and whether a document can be admitted without proof or whether secondary evidence is admissible even otherwise than the provisions contained in Section 65 of the Indian Evidence Act do apply to the proceedings before this tribunal.

20. On going through the evidence produced by the I party, it would be obvious that the I party has not proved that it has got the representative character, that there is proper espousal and that the reference can be maintained by it.

POINT OF DISPUTE

21. Since it is deemed expedient that independent finding should be recorded on the aforesaid additional issue and the point of reference, the evidence on record is assessed and a finding has been recorded on the point of reference as though additional issue No. 1 has not been raised at all. The order of reference states whether the management is justified in keeping the order of promotion dated 3-8-82 in abeyance. The very wording of the order of reference indicates that prior to 3-8-1982, he was not working as a supervisor and that only by virtue of an order dated 3-8-82, he was promoted as a supervisor. The I party workman has, however, a different case. In para 1 of the claim statement, he contends that he was appointed as a supervisor in 1977. In para 2 of his claim statement, he states that he has got 5 documents to show that he has worked as a supervisor between 7-8-1982 and 8-10-1982. It is an admitted fact that by office order dated

3-8-82, Ex. M-7, the II party had promoted him as a daily rated supervisor on a consolidated wages of Rs. 13.50 p. with effect from 1-8-1982. The five documents referred to in para 2 of the claim statement which are subsequent to Ex. M-7 dated 3-8-82 do not therefore prove that he was appointed as a supervisor and worked as a supervisor from 1977. WW-1, the workman has sworn that he had produced certain documents to strengthen his plea that he was appointed as the supervisor.

22. It is the case of the II party in Para 2 of their counter-statement that in some documents, he has been shown as a supervisor by mistake or oversight, but since 1977 to 1984, he has worked as a watchman, received the wages as a watchman, never complained that he has received the wages of a watchman only though he should have received the wages of a supervisor and that he has himself taken some exception for his being described as a supervisor in one of the letters. However, it is sufficient for the purpose of the present discussion whether he was appointed, designated or ever worked as a supervisor till 1-8-82, the date from which the order of promotion Ex. M-7 is said to have come into effect.

23. Ex. W-10 dt. 23-4-82 is a letter issued to the Executive Officer of Bellikere port yard. It states that the II party was sending some manganese for analysis and the said officer was requested to stock the material separately. Copy of the same has been issued to the workman and he has been shown as supervisor incharge. Ex. W-11 dated 20-4-82 is a letter to M/s. Jayagopal Enterprises, Jagalbet. The said firm has been requested to receive the material sent with the workman Masuthi and stock the same separately for sampling, before being loaded. The workman has been referred to as supervisor incharge. Ex. W-12 shows that Masuthi was asked to issue the material for transportation through Kamakshi Transport Company. WW-1 Masuthi has not been addressed by his designation in Ex. W-12. Ex. W-13 is a memo in regard to certain material. Therein also WW-1 Masuthi has not been addressed by any designation. Ex. W-9 is a certificate dated 20-7-78. It has been stated therein that his name had been recommended for mines mate. The II party contended that the said certificate was issued in order to facilitate him to gain higher qualifications, since Exs. W-10, and W-11 show the designation of WW-1 Masuthi as supervisor incharge, they do not help him to prove that prior to 1-8-82 he was appointed as a supervisor. Similarly, Ex. W-9 issued for some other purpose to give him leverage for acquiring higher qualifications cannot be accepted for holding that the management had appointed him as a supervisor in 1977 itself.

24. In the examination-in-chief, in Para 7 itself, WW-1 Masuthi admits that he was not given the pay and allowances and other facilities of a supervisor. If ever he had been appointed as a supervisor since 1977 itself nothing prevented from making representations to the management that they were not paying him the pay, allowances and other facilities that were given to the supervisors. There is no explanation as to why he did not make any such representation. The conduct, as admitted by him is not consistent with his case that he was ever appointed as a supervisor in 1977.

25. The evidence of MW-1 Shankar, the Mines Manager of the II party discloses that prior to his going to Jambunathanahalli iron ore mines, he was working in Supa as a watchman, and he was transferred to the II party mines as a watchman. The II party has produced the Form 'A' register, Ex. M-1. It contains the particulars of all the workmen engaged in the II party mines. Ex. M-1 (a) at Sl. No. 311 shows that on 2-3-1977, MW-1 Masuthi had been appointed as a watchman and he came over to the II party mines as a watchman on 25-6-1983. In para 5 of his evidence MW-1 Shankar swears that WW-1 Masuthi has signed in the register at Ex. M-1 (c) and he has also put his signature at Ex. M-1 (b). Ex. M-2 series is the service history sheet of WW-1 Masuthi. It is for the period from March 1977 to November 1983. On pages 2, 3 and 4 of Ex. M-2 series, the designation of WW-1 Masuthi is shown as watchman. Para 7 of the evidence of MW-1 Shankar further shows that regarding the documents maintained in the Head Office, the Head Office sent the same along with the forwarding letter Ex. M-3 dated 13-2-1984. The genuineness of the history sheet Ex. M-2 and the forwarding letter Ex. M-3 cannot be disputed. Per se

they are unassailable documents. Ex. M-5 dated 21-2-1977 is a copy of the application made by him for employment in the II party. The said document has not been disputed. WW-1 has stated therein that he may be employed to any suitable job. In response to the correspondence made by MW-1 Shankar, the head office had informed him about the particular of WW-1 Masuthi. Ex. M-4 dated 14-11-83 indicates that WW-1 was first appointed on 2-3-1977 as a Watchman at supa stack yard and subsequently he was transferred to Kurundi stack yard. It further shows that from 15-11-82 to 18-11-82, he had been kept under suspension for four days and the II party mines manager was asked to state whether the wages of WW-1 Masuthi had been paid for the period from 19-11-82 to 30-11-82, since he was complaining that he had not received the said wages. The Project Manager of the Supa Mining project had informed the Head Office that as per the wage register WW-1 was paid for 9 days and 4 days, subsequently. Ex. M-6 and M-6 (a) be testimony to the fact that in November 1983 also he had been designated as the watchman.

26. The management contends that there are several letters to show that only after Ex. M-7 dated 3-8-82 he was shown as a supervisor for some time, but since the said order was issued on account of mistake, it was kept in abeyance and thereafter WW-1 Masuthi has been again shown in all the records as a watchman, but that however in collusion with some official, he has changed the records and manipulated to show that he was a supervisor, by scoring the writing as watchman. Ex. M-8 dated 9-8-82 is a letter by WW-1 Masuthi to the chairman of the II party. The signature at Ex. M-8 (a) is admitted to be of WW-1 Masuthi. As regards the contents of Ex. M-8, WW-1 Masuthi swears in para 61 that he had given the said letter as dictated by the management. He, however, admits that the contents are true. In the second para to Ex. M-8 WW-1 Masuthi states that he was promoted as a daily rated supervisor on consolidated wages of Rs. 13.50 per day with effect from 1-8-82 as per the letter dated 3-8-82. But his existing pay was Rs. 398.70 P. whereas consequent to his promotion as a supervisor in the scale of Rs. 13.50 per days, he will be eligible to only Rs. 364.50 P. and after promotion, he stands to lose a sum of Rs. 34.20 per month. He has further stated that he was further losing the sick leave benefit which he was getting as a daily rated employee, and he has requested the management to set right the anomaly by giving him a suitable scale. Since, it is an admitted fact that the contents of Ex. M-8 are true there is thus a clear admission that prior to 1-8-82, i.e. before he issue of the promotion order Ex. M-7, he was getting Rs. 398.70 P. in the scale of Rs. 10.10+ D.A. per day, which is the scale of a watchman.

27. Besides, examining the workman WW-1 Masuthi, the I party has not examined any other witness to substantiate his evidence that from 1977 to 1-8-82 he was working as a supervisor. Second party has produced the book of cadre and recruitment rules of Mysore Minerals Ltd (henceforth called as MML). As per Rule 11, even in the case of temporary appointments, the officer shall have to be in writing showing that the appointment is a temporary one. The suggestion made to MW-1, Shankar in Para 68 is that there are no cadre and recruitment rules at all in the II party. It is not denied that the II party Mysore Minerals Ltd. is a State Government undertaking. It was argued before me by the learned counsel for the II party that the Mysore Minerals Ltd., has about 50 mines throughout the State and it has employed thousands of workmen.

The C and R Rules, in the context of the evidence. Looking at of MW-1 and MW-2. I find that there is no force in the contention of the I party that the MML could not have recruited employees on terms and conditions of the service, as per of C and R rules. MW-2 Srinivas is the Chief Administrative Officer of the MML. He has been examined to show that the Chairman and the Managing Director approved the order of promotion and then he issued Ex. M-7. The evidence of MW-1 Shankar, MW-2 Srinivas and the documents produced for the management prove that WW-1 Masuthi was appointed as a watchman and he was promoted as a daily rated supervisor only with effect from 1-8-82 as per the order Ex. M-7 dated 3-8-82. The evidence of WW-1 Masuthi and the documents relied upon by the I party do not

establish that the initial appointment of WW-1 Masuthi was as a supervisor itself. The contention of the II party management in para 4 of the counter statement is that the initial action of the management promoting Masuthi from the post of a watchman to the post of a supervisor was contrary to the C and R rules and soon after the management noticed the mistake the order of promotion was kept in abeyance. The order of reference calls upon this Tribunal promotion was kept in abeyance. The order of to record a finding whether the management was justified in keeping the said order of promotion in abeyance and not paying him the appropriate salary and other benefits. It is the contention of the I party that WW-1 Masuthi had been throughout working as a supervisor. His contention that he was working as a supervisor till 1-8-1982 has been rejected. The order keeping the promotion of WW-1 Masuthi in abeyance is to be found at Ex. M-11 dated 24-9-82. It does not lie in the mouth of the management to contend that WW-1 Masuthi was not designated as a daily rated supervisor or that he did work as such between the period 1-8-82 of Ex. M-7 and 24-9-82 of Ex. M-11.

28. The next important question would be whether WW-1 Masuthi had the designation of a daily rated supervisor and whether he worked as such even after 24-9-82, the date of Ex. M-11. Ex. M-11 was issued to him when he was still working in the Kurundi stock yard. The name of WW-1 was not correctly shown in Ex. M-11 and therefore a corrigendum was issued as per Ex. M-12 that his name should be read as R. A. Masuthi. The first four documents referred to by the I party in Para 2 of the claim statement are dated between the period 1-8-82 and 24-9-82, during which period there was no order of abeyance and as per Ex. M-7, he had been already promoted as a daily rated supervisor with effect from 1-8-82. These four documents do not therefore help him to show that even after 24-9-82, the date of Ex. M-11, he was working as a supervisor. Several documents relied upon by the management such as Ex. M-13, suspension order dated 15-11-1982, Ex. M-17 notice of enquiry dated 30-10-82 Ex. M-17 notice of enquiry dated 30-10-82, Ex. M-18 dated 29-12-82 showing the appointment of an Enquiry Officer, Ex. M-19, dated 30-12-82 the enquiry proceedings, Ex. M-22 a memo dated 23-1-1983 calling upon him to show cause as to why disciplinary action should not be taken against him. Ex. M-23 dated 28-1-83, office order regarding keeping him under suspension for four days, Ex. M-26 dated 24-9-82 office copy of the order of abeyance showing that the original was sent to him by registered post, Ex. M-28 dated 31-1-83 that he should hand over the charge of Kurundi mines to T. Honnegowde, Ex. M-29 dated 25-3-83, memo calling upon him to show as to why disciplinary action should not be taken against him for certain acts of misconduct, Ex. M-31 dated 7-4-83 letter from the Supa Project Manager to their office, with a copy to the workman, Ex. M-32 dated 22-4-83 that however a lenient view had been taken against him. Ex. M-35 dated 6-5-83 a letter regarding his T.A. bills, Ex. M-37 dated 22-4-83 letter returning his T.A. bills. Ex. M-39 dated 5-6-83 a memo ordering for an enquiry for his absence for some days, Ex. M-40 dated 5-6-83, the enquiry proceedings held against him. Ex. M-41 dated 14-5-83, the office order showing general transfers, Ex. M-42 issued in March 1983, the last pay certificate of Supa mining project. Ex. M-43 dated 30-6-83 the forwarding letter for Ex. M-42. Ex. M-45 dated 6-7-83 letter from the project manager Supa to the Mines Manager of the II party regarding his emoluments, Ex. M-46 dated 12-7-83 another last pay certificate. Ex. M-47 dated 13-7-83 the forwarding letter for Ex. M-46. Ex. M-49 dated 6-1-1984 that he should report to the Mines Foreman at the mines and should hand over the charge of the crache. Ex. M-50 dated 10-1-1984, the reply sent by II party to the Advocate of WW-1 Masuthi Ex. M-51 dated 17-1-83, the letter from the II party to the Labour Officer, Bellary along with its enclosure, Ex. M-52 dated 20-1-84, the notice calling for explanation from WW-1, as to why he has reported to the mines. Ex. M-54 the minutes of the conciliation dated 10-8-84. Ex. M-57 dated 31-8-84 the report of the A.L.C. to the Secretary to the Government. Ex. M-59 dated 2-4-85, a letter from the II party to the A.L.C., Bellary. Ex. M-60 dated 7-5-85, the written statement filed by the II party before the A.L.C. Bellary. Ex. M-61 dated 24-7-85, additional written statement by the II party filed before the A.L.C. Bellary. Ex. M-62, the wage registers, Ex. M-63 dated 29-7-83, the xerox copy of the letter from the labour

enforcement officer to the Supa Project Manager, Ex. M-69. The letter from LEO Hubli to the Project Manager of the Supa Project and Ex. M-71 dated 23-5-84 from the Manager of the II party to WW-1, calling for his explanation as to why he did not report to duty at the mines, show the designation of the WW-1 Masuthi as the watchman. On the other hand, the workman has produced the office copies of his representations and letters and some other documents such as Ex. W-31 dated 31-5-83, a letter from the I party to the Managing Director of MML Ex. M-32 the letter from the Advocate of WW-1 Masuthi to the Chairman MML, Ex. W-33 letter dated 5-4-84 from WW-1 to the Chairman, Ex. W-34 dated 15-4-84 letter from WW-1 to the Chairman of the MML Ex. W-35 dated 16-1-84 representation by WW-1 to the Manager of the II party, Ex. W-26 dated 17-1-84 letter from WW-1 to the Manager, Ex. W-37 dated 18-1-84 letter from WW-1 to the Manager, Ex. W-38, dated 19-1-84 letter from WW-1 to the Manager, Ex. W-39 dated 23-1-84 letter from WW-1 to the Manager and Ex. W-40 dated 8-2-84 letter from WW-1 to the Manager to show that he complained to the management that he was not given work. In some of these letters and representations, he has shown his designation as supervisor. The learned counsel for the II party has confronted the xerox copy of the letter WW-1 dated 31-5-83 and the explanation given by the workman in para 70 of his evidence is not at all convincing. On referring to Ex. W-31, WW-1 Masuthi states that the Mines Manager of Diggi got Ex. W-31 typed and he has signed at Ex. W-31 (a). He further states that he has himself produced Ex. W-31 before this Tribunal. He concedes that the contents of Ex. W-31 are correct. He further admits that he has struck off the portion typed at Ex. W-31 (b) and then written as supervisor. The photostate copy of which was with the management was produced and it is marked as Ex. W-31 (c). The Original typed matter at Ex. W-31 (d), in Ex. W-31 (c) shows that WW-1 Masuthi had contended in his said letter written on 31-5-83 that he was appointed as a watchman about six years back, and that his grievances should be redressed. In regard to Ex. M-36, he states in para 46 that the II party itself got it typed and then merely he has signed it. The writing at Ex. M-36(b) shows that it was sent to the II party by registered post A.D. Ex. M-36 (a) shows that originally, the designation of WW-1 Masuthi was shown as watchman but subsequently it has been scored off. It is admitted by WW-1 in para 46 that the handwriting at Ex. M-36 (b) and M-36 (c) is his. He further states that he does not know whether the contents of Ex. M-36 are true or not. He denies that he had sent the said letter Ex. M-36 to the management. In para 48, he admits that he had sent one representation to the LEO and he had given his address as shown in Ex. M-63. When he was confronted with Ex. M-63, he has stated in Para 48 of his evidence that he cannot say whether he had sent Ex. M-36 to the management. In the cross-examination in Para 50, WW-1 has shown his letter dated 21-4-83, Ex. M-34 (a). In regard to the said letter, he has sworn that it was obtained by management from him by force. Ex. M-34 (a) reads that WW-1 had sent a leave application on 1-4-83 for 10 days E.L., but so far there was no response and therefore he made another request to grant him the said leave, because his mother was sick and there was none else to look after her. It can be hardly believed that any officer of the II party had any knowledge of such bad and ascitive to compel WW-1 to get a letter of the nature of Ex. M-34 (a) typed and signed by him. Everything in Ex. M-34(a) is in favour of WW-1 Masuthi except the designation at Ex. M-34 (b) is shown as watchman. WW-1 Masuthi was confronted with the letter dated 3-5-83, Ex. M-64. He admits his signature at Ex. M-64 (a). He states that he cannot say whether he had sent the said letter to the management. Ex. M-64 deals with his grievance that the management had not granted him the leave of 10 days sought for by him. The management has produced the postal envelopes at Exs. M-65 and M-66 to show that these letters had been sent by WW-1 by registered post. The letter Ex. M-34 dated 21-4-83 was shown to WW-1 and in para 52 of his evidence he was questioned about the signature at Ex. M-34 (b). He admits that the signature is his. However, he states that he does not remember whether he had sent a letter himself or whether it was taken from him by force. The envelope, Ex. M-65 was shown to him and he admits that the address written thereon is in his hand. It has been suggested to him that because he has shown his designation

as a watchman at Ex. M-34 (c), he has been denying that he had sent that letter Ex. M-34 in the cover Ex. M-65. Then he has been confronted with the letter Ex. M-33 dated 29-4-83. He had admitted his signature at Ex. M-33(a). In Ex. M-33 also, the designation of WW-1 has been shown as watchman. It is obvious that he has given evasive answers in regard to Ex. M-33 in his evidence at para 53. The postal cover Ex. M-66 was pointed out to him and he admits that true to and from addresses on the same are correct but however, he states that he does not know whether he had sent the letter Ex. M-33 in the cover Ex. M-66. His representation dated 6-4-1983, Ex. M-30 was pointed out to him. He admits his signature at Ex. M-30 (a). He however contends that he does not know whether he had sent Ex. M-30 by registered post. At Ex. M-30 (b), his designation has been shown as watchman. Similarly, the workman has been confronted with his letters, Ex. M-20, Ex. M-21, M-24 and M-27. Though, he admits his signatures at Ex. M-20 (a), Ex. M-21 (a), Ex. M-24 (b), Ex. M-24 (c) and Ex. M-27 (a), he states that he does not know whether he had sent all these letters to the management by the registered post. All these letters again show that he asserted to be a watchman. In para 57 of his evidence, he has been shown all his letters at Exs. M-20, M-21, M-24, M-27, M-30, M-33, M-34 and M-36 and it has been suggested to him that in all these letters he had himself shown his designation as watchman and had sent them to the II party, but now in collusion with somebody in the office, he had got typed matter "watchman" scored out in order to show that he was not working as a watchman. Looking at the contents of these letters, it can never be believed that any officer of the II party had any interest to get these letters typed and signed by him forcibly. It is too patent to be denied that because these letters would show his designation as watchman, he is, purposely denying that he had voluntarily written them. Similarly, the letters in his own handwriting, such as Exs. M-14, M-15 and M-16 were pointed out to him. He squarely admits that in these letters, the designation was as watchman is written in his own hand. They are at Exs. M-14 (b), M-15 (a) and M-16(b). He, however, states that they were got written by force. It is not his case that till today he has ever complained to any officer of the II party that Mr. M. Appaji Gowda dictated him about the contents of these letters and forced him to sign them. The very contents of Ex. M-14, M-15, and M-16 are contradictory to his contention that any Appaji Gowda had forced him to write them. Then he was shown his letter Ex. M-21. In para 59 of his evidence, he states that he cannot say whether the contents of Ex. M-21 are true or false. In para 60, it has been suggested to him specifically that he had stated as per Ex. M-21 (b) that he had been working only as a watchman and not as a supervisor, but in order to overcome his present plea, he has been deposing falsehood. It cannot be forgotten that Ex. M-21 is dated 13-1-83, long after the order keeping the promotion in abeyance.

29. As regards Ex. M-11 dated 24-9-82, in para 61 of his evidence, he has been shown the document Ex. M-5. He has stated that he cannot say whether he submitted his application to the management as per Ex. M-5. He admits that he had received Ex. M-7, the order promoting him as daily rated supervisor. Ex. M-8 dated 9-8-82 was shown to him and he has admitted about his signature at Ex. M-8 (a). He further admits that the contents of Ex. M-8 are true. As observed earlier, he has put forth his grievance, that as a watchman prior to 1-8-82, he was getting Rs. 398.70 P. per month in the scale of Rs. 10.10 plus D.A. per day whereas consequent to his promotion as a supervisor in the scale of Rs. 13.50 per day, he would be eligible only for Rs. 364.50 P. and thus he stands to lose Rs. 34.20 P. and therefore he has requested the management to set right the matter and to give suitable scale so that his present emoluments were protected and he should at least come marginal increase on account of promotion. In para 61 of his evidence WW-1 Masuthi states that he had accepted the promotion from the post of a watchman to that of a supervisor and he had sent the representation Ex. M-8. It has been suggested to him that after the management had issued the order of abeyance as per Exs. M-11 and M-12 the same were served on WW-1 Masuthi. However, WW-1 Masuthi denies about the receipt of the same. The letters which are of a date subsequent to 24-9-82 themselves show that WW-1 Masuthi has shown his designation as watchman and it emerges that he was very well aware of the order.

of abeyance issued as per Exs. M-11 and M-12.

30. In regard to the enquiry held against him, he has stated in para 63 that he does not know whether he had received the enquiry notice as per Exs. M-17 and M-18. The proceedings at Ex. M-19 do show that there was an enquiry against him and in the said enquiry held in December 1982, he has been shown as the watchman. In regard to the show cause notice, and the order Exs. M-22 and M-23, WW-1 states in para 64 that he had not received them. The evidence of MW-1 Shankar and the documents produced do show that he had been punished with an order of suspension of 4 days from 15-11-82 and in those proceedings also his designation has been shown as a watchman.

31. In regard to the office orders at Exs. M-38, M-29, M-37 and M-41, WW-1 states in para 65 that he had not received them. It has been suggested to him in para 66 of his evidence that he did receive them but he has been falsely denying about the same. Ex. M-41 is the office order of general transfers. Since it is an admitted fact that WW-1 came to II party mines from Supa mining project, the denial in regard to Ex. M-41 cannot be believed. In all these documents, the designation of WW-1 is shown as a watchman. In para 67 of his evidence WW-1 however states that he was transferred from Supa to Jambunathana-halli by an oral order. Looking at the letters and representations given by him, it can hardly be believed that he came over to the II party mines on an oral transfer order. An irresistible inference arises against him that he is denying the receipt of these letters or the representations made by him, because they show his designation as a watchman.

32. In regard to Ex. M-63 dated 29-7-83, it is admitted by him in Para 68 that he had received the original of the same from the IEO, Hubli. Ex. M-63 refers to the representation dt. 16-7-83 given by WW-1 Masuthi to the IEO, Hubli. The said representation has been produced by the workman at Ex. M-67. In para 68 of his evidence WW-1 Masuthi admits that he had sent the representation Ex. M-67. It is admitted by him that he had written Ex. W-67 without any force or pressure of anybody. It is obvious that at Ex. M-67 (a), he had described himself as the watchman but when he produced it before this Tribunal, he has scored off the letter "watchman" and had written as "supervisor". Ex. M-68 is the xerox copy of Ex. M-67. It shows that the original typed matter of Ex. M-67 (a) was watchman. On going through the evidence of WW-1 in Para 69 and these two documents at Exs. M-67 and M-68, it is as clear as day light that the I party of the WW-1 has tried to cook-up evidence and fabricate documents. In para 70, with reference to Ex. W-31, WW-1 Masuthi states that it was got typed by the Diggi Mines Manager and he signed at Ex. W-31 (a). It is, however, admitted by him that he had himself produced it before this Tribunal. It is admitted by him that the contents of Ex. W-31 are correct. He further concedes that he had struck off the portion shown as Ex. M-31(b) and he has written the word supervisor above the scored matter. The photostat copy of Ex. W-31 has been marked as Ex. W-31 (c) and the original typed matter at Ex. W-31 (d) reads as a watchman. It is manifest from Ex. W-31, W-31 (c) and the evidence of WW-1 in para 70 that WW-1 has manipulated the documents and has falsely tried to establish that he was designated and he was working as a supervisor even after 24-9-82 the date of Ex. M-11. Ex. W-32 dated 2-11-1983 is a legal notice issued by the lawyer of WW-1 Masuthi. It has been contended in the first para of the notice that WW-1 Masuthi has been appointed as a supervisor in 1977 and since then till the date of the notice, he was working as a supervisor. In para 5, it has been stated that his client was entitled to the grade and salary of a supervisor since he was discharging the duties of a supervisor and that the II party should comply with the demand within a fortnight. The evidence of MW-1 Shankar has established that the order of abeyance Exs. M-11 and M-12 have been served on WW-1 Masuthi. There is insurmountable documentary evidence and specially

the admissions made by WW-1 Masuthi himself in his letters that he had been working as a watchman after 24-9-82. Ex. W-33 is a representation by WW-1 Masuthi dated 5-4-84. Ex. W-34 dated 13-4-84 is another similar representation sent by him. Ex. W-35 dated 16-1-84. Ex. W-36 dated 17-1-84, Ex. W-37 dated 18-1-84, Ex. W-38 dated 19-1-84, Ex. W-39 dated 23-1-84 and Ex. W-40 dated 8-2-85 are similar representations sent by WW-1 Masuthi to the II party. In para 71 of his evidence, MW-1 Shankar has emphatically denied the suggestion that he had forcibly removed WW-1 Masuthi from the mines. These letters at Exs. W-31 to W-40 have not been put to MW-1 Shankar for his explanation. In my opinion, in the event of the overwhelming evidence produced by the management, the contention of the I party that Masuthi had been designated and he was actually working as a supervisor even after 24-9-82 cannot be accepted.

33. In para 5 of the claim statement itself, it has been admitted that on 18-6-1983 WW-1 Masuthi was transferred from Dandeli to Hospet. It is further admitted by him that from June 1983 till the end of 1983, he was working at the II party mines. It is then contended that in the first week of January 1984, he was asked to work as a watchman and then he refused to obey the illegal orders because he was actually designated and working as a supervisor. Now, it requires to be examined how far these contentions of WW-1 are correct. The evidence of MW-1 Shankar in Para 34 and the office order at Ex. M-35 disclose that on 6-1-1984 the manager MW-1 Shankar issued an office order that the services of WW-1 Masuthi were required at the mines as a watchman and with immediate effect, he should go and report to the mines Foreman and should handover the articles of the creche to one Shri M. R. Goggi. MW-1 Shankar has further sworn that in spite of the order as per Ex. M-45 WW-1 Masuthi did not report for duty till the date he gave his evidence on 17-6-88. It appears that on 1-9-84 Shri Mannar Advocate for WW-1 Masuthi had sent a telegram to the management and in response to the said telegram, the II party informed the advocate as per Ex. M-50 dt. 10-1-84 that WW-1 Masuthi was designated as a watchman and he has been paid the wages of a watchman and since he has been working as a watchman he has been paid the wages of a watchman and if there has been any injustice caused to him, he can get the matter set right from the Head Office. The evidence of MW-1 then shows in Para 37 that he had received a letter dated 9-1-84 from the Labour Officer, Bellary and in reply he sent Ex. M-51 dt. 17-1-1984. The Manager of the II party mines has informed the Labour Officer that the matter was being considered at the head office and sometime may be granted for a detailed reply. In the meanwhile the Mines Manager had issued a reminder to WW-1 Masuthi as per Ex. M-52 dated 20-1-84 that in spite of the order of transfer Ex. M-49 dated 6-1-84, he did not attend to his duties, nor has he applied for leave and he was requested to report to duty within a week. In reply to the reminder issued by the Mines Manager as per Ex. M-52 dated 20-1-84, the Advocate for WW-1 Masuthi has sent the letter to the Mines Manager as per Ex. 53 dated 25-1-1984. The advocate has stated that it was illegal on the part of the Mines Manager to send such letters and if any such letter was sent to him, he would take necessary steps and therefore, it appears that he returned the letter to the Mines Manager. The record discloses that thereafter there was the conciliation meeting on 10-8-84 before the A.L.C. Bellary. The management contended before the ALC that he was not designated as a supervisor, that he was ever permitted to report to duty as a watchman and he may continue to work. It appears that the conciliation officer required further evidence and he addressed letters to the parties as per Ex. M-55 dt. 10-8-85. Ex. M-56 dt. 17-8-84 is the information supplied by the II party in reply to Ex. M-55. Ex. M-57 shows that thereafter the ALC Bellary reported to the Secretary to Govt. of India, Ministry of Labour that the management asserted that they had not terminated the services of WW-1 Masuthi as alleged by him and he was free to report for duty as a watchman at any time. It was Shri Masuthi who was not prepared to report to his duties at the mines, until a proper designation and full back wages were given to him. Ex. M-58 dt. 21-11-84 is a letter from the Under Secretary to the Govt. of India.

Ministry of Labour to both the parties stating that the Government found that the services of the workman had not been terminated and that the dispute raised by him in his individual capacity was not maintainable. The learned counsel for the II party contended that from these documents and also the documents at Exs. M-59, M-60 and M-61, it is obvious that the Government did not accept the contention of the workman that the II party had terminated his services or had refused to give him work and thus there can be no order in regard to any alleged termination of his services or reinstatement or payment of back wages. The learned counsel for the II party further argued that the 8 wage registers at Ex. M-62 series disclose that he had been paid the wages of watchman and that at no point of time and also in the claim statement the I party and WW-1 Masuthi have not alleged any ill will or mala fides on the part of any officer of the II party. It was urged that under such circumstances, this Tribunal need not consider and take into account the allegations made by the I party that his services have been illegally terminated. The point of reference itself makes it clear that this Tribunal is not called upon to refer to or take into account or record any finding on the point whether his services have been ever terminated or whether he was himself absented from duties unauthorisedly, as alleged by the II party. It follows that this Tribunal need not enter into the further question whether he is entitled to any back wages or for any other compensation for the period that he did not work in the II party.

34. The evidence as analysed above leads to a conclusion that after 24-9-1982, the date of Ex. M-11, WW-1 Masuthi has been designated and has been working as a watchman and until 6-1-84, the date of Ex. 49 he had no grievance in working as a watchman. His grievance commences from the date of Ex. M-49, when he was asked to go and work at the mines as a watchman, instead of working in creche as a watchman. As observed earlier, neither the letters nor the respondent nor the creche attendance register nor the proceedings before the Conciliation Officer establish for the I party that after 24-9-82, he worked as a daily rated supervisor or he was ever designated as such.

35. The material question involved in the matter is whether there is any justification in the contention of the II party that after the order of promotion was issued on 3-8-82 as per Ex. M-7, the management of MMI found that it was irregular. Since the C&R rules do not permit for promotion of a daily rated watchman to the post of a daily rated supervisor and therefore soon after the mistake was detected, the order of abeyance Ex. M-11 was issued. The evidence of MW-2 Srinivas shows that the Chairman and the Managing Director had approved the order and then he issued Ex. M-7. It is a matter of great regret that the Chairman and the Managing Director of a big state Government undertaking such as MMI should have taken a decision to promote a daily rated watchman to the post of a daily rated supervisor without examining their own C&R rules and without finding out whether there is ever a post of a daily rated supervisor in its organization. However, an error or a mistake or an inadvertent lapse cannot invest the beneficiary with any right in law and also in equity. The party at fault can be permitted to correct its error or mistake. The only thing to be examined under such circumstances would be whether it was a bona fide mistake or whether there is any motive behind such an action. It is reiterated that there is absolutely no allegation or no motive attributed to any officer of the II party. The learned counsel for the II party on the other hand contended that only because the II party had found that WW-1 Masuthi should be promoted, the order Ex. M-7 has been issued promoting him as a daily rated supervisor. The C and R rules do not provide for the promotion of a daily rated watchman to the post of any daily rated supervisor. Schedule II to the rules deals with the categories of daily rated workman. The watchman is shown at Sl. No. 31. At Sl. No. 20, there is a post called Asst. Supervisor. It is thus obvious that the II party had committed a mistake in promoting WW-1 Masuthi as a daily rated supervisor, when the C and R rules did not provide for the post of a daily rated supervisor in Schedule No. II. Schedule No. I of the C and R rules shows about the permanent posts. At Sl. No. 93 there is the post of a supervisor. The qualification required for a supervisor

as per Sl. No. 93 is that the candidate should be degree holder in science, commerce or arts. In the column of mode of recruitment, it has been shown that a supervisor can be appointed from the conversion from the daily rated supervisor who has been working on consolidated wages on daily rated scale for a period of one year or more. It appears that the framers of the C&R rules did not notice that there ought to have been a provision for the daily rated supervisor in Schedule II, so that there can be a promotion of an employee from the post of a daily rated supervisor to the post of a permanent supervisor, provided that he had put in one year of service and provided that he had the merit and seniority. The C and R rules specifically provide that the promotion shall be based on seniority cum-merit. Rule No. 17 shows as to how the seniority list should be prepared. Rule No. 20 provides for the appointment by promotion. The oral testimony of WW-1 that many persons appointed as watchman have been promoted as supervisors has not been substantiated by any other oral evidence or documentary evidence. In the face of the C&R rules and the specific statements made in the counter statement, it can be hardly accepted that many persons who had been working as watchman have been promoted as supervisors. The C&R rules are binding on the parties and neither the management nor the workmen can be permitted to transgress the bounds or limits prescribed by the C&R rules. In the authority of Mangalore University Non-teaching Employees Association Vs. Mangalore University vide WP. No. 8349 of 1988 (MD 10-6-88), a principle has been enunciated that an institution which falls within the ambit of state is defined in Article 12 of the constitution is bound to comply with Articles 14 and 16 of the Constitution and must not act otherwise than in accordance with the rules which will be violative of Articles 14 and 16. Under such circumstances, the II party cannot be asked to perpetuate the mistake committed by it. At the best, the I party workman would be entitled to claim some monetary benefit by way of compensation for the wrong caused to him in promoting him as a daily rated supervisor and then keeping the said punishment in abeyance for an indefinite point of time without taking any further action to set right the mistake.

36. In para 7 of the first written arguments, it has been contended that MW-1 Shankar has admitted about the wages paid to WW-1 Masuthi and it may be held that he was drawing more wages than what has been contended. The wage registers at Ex. M-62 and the last pay certificates produced by the management are certainly preferably to the oral evidence of MW-1 Shankar. The admission made by MW-1 Shankar in para 49 is that when MW-1 was appointed as a watchman, his minimum wage was Rs. 5.50 per day. With reference to record it has not been shown as to how the said commitment is of any assistance to the I party.

37. From paragraphs 8 to 11 of the first written arguments, it is to be seen that the I party intends that the evidence of WW-1 should be accepted, since it has been supported by the documents. The evidence has been discussed thread-bare and on proper appreciation of evidence, I find that the documents produced by both the sides support the case of the management that he was not at all designated nor working as a supervisor till 1-8-1982 and that again he was designated and working only as a watchman from 24-9-82, the date of the order Ex. M-11.

38. In para 12 of the 1st written arguments, it has been contended that after considering all the implications the II party had issued the order of promotion Ex. M-7 and it was not open to the II party to reconsider the same at their will and pleasure. It has been already observed that whenever there is a genuine mistake and when it is shown that it had been committed on account of inadvertence and that it is a bona fide mistake, it is always open to the party suffering the same, to set right the matter. No provision of law nor any precedent has been placed before me to show that a party will be bound even when it is shown that it committed certain act on account of some mistake.

39. In Para 13 of the 1st written arguments, it has been stated that the order of abeyance amounts to unilateral withdrawal or cancellation and since the abeyance is for an indefinite period, it has been held that the management could

not have kept the order of abeyance for an indefinite point of time and for having done so, WW-1, Masuthi will be at the most entitled to some compensation, but he cannot claim that the management should keep him in the post of daily rated supervisor.

40. In para 14 of the first written arguments, it has been contended that the contention that the promotion was contrary to the cadre and recruitment rules is self contradictory and that the working conditions are governed by the standing orders and that cadre and recruitment rules are not applicable. In Para 16 of the 1st written argument, it has been stated that the C & R rules do not form any part and parcel of the standing orders and they cannot be enforced against the 1st party employee. Clause 17 of the standing orders states that all complaints arising out of employment including those relating to unfair treatment shall be submitted to the Manager or other person specified in that behalf. The learned counsel for the II party strongly contended that nothing prevented WW-1 Masuthi from continuing to work at the mines as directed by the Mines Manager and for getting his grievances redressed by making representations to the Chairman of the company. There is no convincing answer from the side of the I party for the said query. On going through the standing orders, it would be obvious that they are applicable only to the workmen working at the mines. Since the II party mines is a part of the Mysore Minerals Ltd., and since the MML is a limited company, having different offices other than the mines, it is in the fitness of things that the company as such should have cadre and recruitment rules to govern the terms and conditions of service, and also the rules dealing with their promotions and other benefits. Secondly, I do not find anything inconsistent in the cadre and recruitment rules which run contrary to the provisions of the standing orders. No employee has a right to promotion. He has only the right that in case he has the seniority and required qualifications, his case should be considered for promotion. In the case at hand, the II party contends that on account of mistake, he had been promoted and a bona fide mistake can be cured at any time by following the correct procedure. There can be no principle of estoppel against the provision of law or any act of the employer which intends to correct the mistake and set right the error committed by it. In that event, for any injury suffered by the employee, he will be entitled only to the compensation.

41. A copy of the standing orders made available shows that standing orders were first approved on 8-6-1970 and there was some addition on 26-8-1974. In the classification of employees in Clause 3, it has been stated that there shall be the following classification :

- (1) Monthly rated employees
- (2) Daily rated employees
- (3) Permanent employees
- (4) Probationary employees
- (5) Company temporary employees
- (6) Casual employee
- (7) Contract employee
- (8) Apprentice.

Since the daily rated employee is one of the categories, the I party cannot claim that the initial appointment as a daily rated employee was bad in law. The standing orders do not provide any rules as to the nature of posts or the qualification required for recruitment of each post or the rules of recruitment and promotion. In Clause 9(d) of the standing orders, it has been specified that in regard to employees' other benefits or privileges, the administrative rules of the company as laid down in the legislature concerning the same shall be the criteria. It is not the case of the I party that the standing orders provided for the promotion of a daily rated watchman to the post of a daily rated supervisor and that if an order of promotion is issued by some mistake, the management is prevented from setting right the said mistake. In para 17 of the first written arguments, it has been contended that the conditions of service can be enforced only by a contract of service or by the certified standing orders and that the C & R rules have no legal entity. The contention has not been supported by any provision of law or authority. The C and R rules will be applicable to

WW-1 Masuthi by virtue of clause 9 of the standing orders, as discussed above.

42. In para 20 of the 1st written arguments, it has been contended that WW-1 was forcibly locked and prevented from entering into the mines and various letters support his contention. The evidence of WW-1 that he was forcibly sent out of the mines has not been supported by anything on record. The subsequent conduct, the letters sent by the management and the conciliation proceedings establish for the II party that there is hardly any force in the contention of the 1st party that he was prevented from entering into the mines. The evidence discussed above would indicate that since the time he was transferred from the creche to the mines by Ex. M-49 he himself abstained from work.

43. The contentions of paras 21 and 22 of the written argument have been already discussed with reference to oral and documentary evidence placed before me. It cannot be gain-said that the I party has established that in 1977 his first appointment was as a supervisor and he has continued to be so till today.

44. In para 24 of the first written argument, it has stated that Attendance Register in the creche is a statutory document and it shows that WW-1 was working as the supervisor and that on the strength of the said document, it may be held that he has been working as a supervisor. The admission made by a party cannot be pressed into service in favour of the party making it. If the workman has written his designation as a supervisor in the book expected to be maintained by him, it does not help him. The explanation given by him for its production is hardly convincing. The argument does not hold water.

45. In para 25 of the first written arguments, it has been stated that in paras 36 and 37, WW-1 Masuthi has sworn that there are about 10 or 15 persons who have been promoted as supervisors and that the II party cannot resort to any arbitrary action. Nothing prevented the I party from examining any of those 10 or 15 persons. Secondly, any alleged action contrary to the provisions of C and R rules will be by itself a wrong act. There is no force in the contention advanced by a party that a wrong committed by the adversary in respect of a third party should be compelled to be committed by the said party in his favour also. The contention is not sustainable.

46. In para 27 of the first written arguments, it has been stated that all these documents, more than 100 were in the custody of the II party and they show that WW-1 was a supervisor and if there is any matter scored off, it is the responsibility of the II party to explain the same. The II party has explained that since WW-1 Masuthi is the interested party, he in collusion with some person working in the office has tampered with them and scored off the word watchman and has made the same to appear as supervisor. I am of the view that a submission made by the II party in that connection is consistent with the oral evidence and also with the contents of the documents themselves. The said contention of the I party is not available.

47. The submissions put forth in paras 27 to 30 of the first written arguments have been already discussed at considerable length by dealing with the evidence on record. I find that there is no force in the said contentions.

48. The learned representative for the I party has filed a second written arguments on 16-12-88 in reply, after the learned counsel for the II party has advanced his oral arguments.

49. In para 2 of the second written argument, it has been contended that the counsel for the II party was unable to pinpoint a particular grade applicable to a supervisor and in that context, it cannot be expected of the workman to pinpoint any provision. In para 3 of the said written argument, it has been stated with reference to Ex. M-8, his representation was regarding the grade and scale of pay to be given to him. It has been fully stated that the workman had his reservations and that it was a polite protest. The submission is not convincing. Even before the request made by the workman in Ex. M-8 was taken up for consideration to fix him in a specific grade and to grant him the emoluments of the post of the said grade, the management had become conscious about its mistake and I find that there is nothing to

discard the contention of the II party that being unable to decide as to what should be further course of action, the management proceeded to keep the said order in abeyance by Ex. M-11.

50. In para 4 of the second written argument, it has been contended that in paras 36 to 39 of his evidence, WW-1 has stated that on account of favouritism, nepotism and communalism, injustice has been caused to him and that the management was thus motivated in keeping the order of promotion in abeyance. There is no plea of communalism, favouritism or nepotism or victimisation in the claim statement. Secondly, there is not even a shred of evidence to support the verbal versions of WW-1 on those points.

51. It has been held by me that WW-1 Masuthi the workman can, at the most claim some compensation for the wrong caused to him. There requires to be some basis for calculating the said compensation. In Ex. M-8, he contended that by getting the promotion, he was losing Rs. 34.20 p. per month. On promotion, he was being paid Rs. 13.50 per day. The scale of the assistant Supervisor at Sl. No. 10 in the 2nd schedule of Ex. M-20 is as follows :

Rs. 20 80-0 30-16.10-0.35-19.60-0.40-20 80

Taking into account the scale he had reached in the cadre of the watchman, his pay in the cadre of Assistant Supervisor at Sl. No. 20 of Schedule II shall have to be fixed. The difference in the emoluments would be the criteria for fixing the amount of compensation. The amount of compensation shall have to be for the period from 1-8-82 till 24-9-82. For the wrong caused to him in keeping the order of abeyance alive for an indefinite period of time, some lumpsum in the nature of about Rs. 2,000/- would be reasonable. In the present award, this Tribunal will not be able to grant the said relief, for the reason that on issue No. 1, it has been held that there is no proper espousal and that the reference is not maintainable.

52. The order sheet dated 17-6-88 discloses that when the matter was called at Bellary camp, it was found expedient to call upon the workman to join to the duties which he was doing on the day he stopped going for work and on the same wages and without prejudice to his rights and contentions. For the said view, the workman and his representative agreed with only one condition that he should not be shifted from Hospet mines till the disposal of the reference. The learned counsel for the II party submitted that he may join as a watchman at Hospet mines with the wages paid to a watchman as paid to him earlier. In view of the said submissions, it was ordered that the II party should give him work which it was giving prior to the date when he stopped going for work and with the same wages. The said order was passed without prejudice to the rights and liabilities of the parties and their contentions raised in the dispute. On 12-7-88, the II party however filed a memo stating that the workman was sitting idle at the Hospet office and he was not at all working. The matter was again called on 29-7-88. The learned representative for the I party submitted that the workman will go to the Hospet mine and he will attend to his work. Then and order was passed that he should first go and start doing his work and about rest 29-7-88, there is no complaint from either side. In the present proceedings, it has now been held that after 24-9-82, WW-1 Masuthi had no right to claim that the II party should continue him as supervisor. It has been however held that for any period beyond 24-9-82, for whatever work he had done under the impression that he was working as a supervisor, he will be entitled only to compensation and not as wages payable to a supervisor. In view of my said findings, it follows that the II party is at liberty to ask him to continue to work as a watchman and at whatever place it pleases, depending upon the exigencies of the services. This Tribunal, therefore, need not pass any specific order on any other point.

53. In view of earlier findings on the additional issue and point of reference, the following order requires to be passed.

54. In the result, an award is passed to the effect that there is no proper espousal for the I party union, has no locus standi and that the reference is not maintainable. It

is held that the action of the management of M/s. Mysore Minerals Limited in relation to their Jambunathanahalli Iron Ore Mines, Hospet, Bellary Dist. in keeping the order of promotion dated 3-8-1982 issued to Shri R. A. Masuthi, as Supervisor in abeyance and not paying him the appropriate salary and other benefits was justified. It is held that he was entitled to some compensation, but no compensation is awarded to him in view of the finding on the additional issue.

(Dictated to the Personal Assistant, taken down by her, got typed and corrected by me.)

B. N. LALGE, Presiding Officer

[No. L-26012/39/85-D.II(B)]

का. प्र. 392.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार उक्त अधिनियम की धारा 33-क के अंतर्गत श्री पी. बी. छेत्री द्वारा एयर इंडिया बम्बई के प्रबन्धन के विरुद्ध दायर एक शिकायत के संबंध में अनुबंध में निरूपित केन्द्रीय सरकार औद्योगिक अधिकरण, नं. 1, बम्बई के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-1-1989 को प्राप्त हुआ था।

S.O. 392.—In pursuance of Section 17 of the Industrial Disputes Act, 1947, (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, No. 1, Bombay, in respect of a complaint under Section 33A of the said Act filed by Shri P. B. Chhetri, against the management of Air India, Bombay which was received by the Central Government on the 30th January, 1989.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1 AT BOMBAY

Complaint No. CGIT-1 of 1988

(Arising out of Reference No. CGIT 18 of 1986)

PARTIES :

P. B. Chhetri,	
Loader, Staff No. 44321,	
Commercial Department,	
Air-India, Bombay.	... Complainant.
V/s.	
Air-India, Old Airport,	
Santacruz (East),	
Bombay-400029.	... Opposite Party.

APPEARANCES :

For the Complainant—Mr. N. C. Mukherjee, representative of the union.

For the Opposite Party—Mr. M. M. Verma, Advocate.

INDUSTRY : Airlines.

STATE : Maharashtra.

Bombay, the 19th day of January, 1989

AWARD

The Complainant Shri P. B. Chhetri, who was working as Loader in the Commercial Department of the Opposite Party, has filed this Complaint under section 33A of the Industrial Disputes Act, 1947, against the opponents for terminating his services without following the procedure prescribed for retrenchment under section 25F of the Industrial Disputes Act during the pendency of Reference No. CGIT-18 of 1986.

2. The Complainant remained absent from duty from 30th March, 1987 till 1st October, 1987. When he reported for duty on 1st October, 1987, he was not allowed to resume duty and he was informed that in view of his long absence his services were treated as having been voluntarily abandoned by him. The workman, therefore, submitted a representation to the Manager, Bombay Airport, (Cargo), Sahar on 8th October, 1987. This representation was replied to by the Personnel Officer (E) Establishment Division of the Human Resources Development Department of Air-India on 24th October, 1987, justifying the action taken by the Time Office in treating his service as voluntarily abandoned by him. According to the Complainant, he had to leave for his home town in Nepal to attend to his ailing father who was reported to be in a serious condition and could not return till 1st October, 1987, because he himself fell sick and was hospitalised in Nepal. He contended that his services have been illegally terminated without following the due procedure of law and the said action of the management which amounts to retrenchment and which was effected without following the procedure prescribed for retrenchment and during the pendency of Reference No. CGIT-18 of 1986, was illegal, unconstitutional and violative of principles of natural justice.

3. In his written statement the opposite party Corporation contended that the complainant did not attend duties w.e.f. 30th March, 1987, and left employment without any intimation to the Department or to any one. The complainant was advised by means of telegrams dated 26th May, 1987 and 4th June, 1987 inter alia asking him to report for duties immediately, but the complainant neither responded to the telegrams nor did he send any intimation/explanation about his absence from 30th March, 1987 and hence he was advised by Corporation's letter No. AI/EST-TO/COMM/e/44321/287 dt. 16-6-1987 and another letter No. AI/EST-TO/COMM/e/368 dt. 7-7-87, to report back for duty failing which his services would be treated as having been voluntarily abandoned by him from the date of his absence. The opposite party further contended that as the complainant did not report back for duty nor did he send any intimation/explanation about the alleged absence from duty, letter No. AI/EST-TO/COMM/e/44321/503 dated 23rd July, 1987, was sent to him thereby informing him that his services were treated as having been voluntarily abandoned on his own from the date of absence i.e. 30th March, 1987. The opposite party denied the complainant's contentions that his father and he himself were sick and contended that in case the complainant or his father was sick nothing could have prevented the complainant from informing the opposite party about his father's sickness and his sickness and producing the necessary medical certificates in that regard. The opposite party further stated that the contention about the sickness of his father and he himself is baseless and devoid of any truth and the complainant had not mentioned anything about his own sickness in his letter dated 8th October, 1987. According to the opposite party the very fact that the complainant was totally silent for months together is a clear indication that he had on his own violation left employment and it is only upon his return to Bombay, that he has been advised to file a complaint with a view to make wrongful gains from the Corporation. The opposite party further submitted that abandonment of service in each and every case does not amount to termination of service and it is not retrenchment. According to the Corporation as the complainant did not respond to the intimations sent to him there was no alternative but to come to an inevitable conclusion that it was a case where the person had left service on his own thus resigning his post and was not a case of termination of service by the management.

4. The Complainant did not remain present at the hearing of the complaint which was heard as a reference, ex-parte as against him.

5. As mentioned above, the case of the complainant is that his services were terminated by the management, that the action amounts to retrenchment within the meaning of industrial Disputes Act and as this action was taken by the management without following the procedure prescribed by section 25F of the I.D. Act and during the pendency of CGIT Ref. No. 18 of 1986, the termination of service is

illegal. Even if this case of the complainant is accepted, the complaint would not be maintainable because every illegal termination of service does not attract section 33A which can be invoked only if the action of the management contravenes the provisions of section 33 of the Industrial Disputes Act. The foundation of jurisdiction of the Tribunal to entertain the complaint under section 33A is contravention of section 33 of the Industrial Disputes Act. Termination of service not for misconduct though effected without paying retrenchment compensation and notice pay as contemplated by section 25F of the Industrial Disputes Act would not attract section 33A unless the termination is effected by way of punishment for misconduct. The remedy available to the workman in such case would be to raise an Industrial Dispute.

6. The action of the management in this case, however, was neither termination simpliciter nor was it a case of voluntary abandonment of service by the workman or voluntary resignation as contended by the management. It was a case of discharge for misconduct.

7. The Air-India Employees' Service Regulations do not empower the management to treat absence without permission for more than particular number of days as voluntary abandonment of service or voluntary resignation by the workman. There is no Regulation which lays down that if the workman remains absent without permission for a particular number of days he will be deemed to have abandoned his service. On the contrary absence without leave or over staying the sanctioned leave without sufficient grounds or proper or satisfactory explanation or absence from the employee's appointed place of work without permission or sufficient cause is misconduct contemplated by Regulation 32(vi) for which the Corporation can impose any of the punishments mentioned in Regulation 43. Further Regulation 49 lays down that no employee shall resign from the service of the Corporation except by giving such notice as he would have received under Regulation 48 if his services were to be terminated or compensation in lieu of such notice unless, at the request of the employee, the notice is waived or shorter notice accepted in writing by the competent authority. Regulation 48 contemplates a notice in writing of 30 days duration if termination of services of a permanent employee is to be effected. Clause (b) of Regulation 49 specifically lays down that if an employee leaves the service of the Corporation without giving any notice or by giving inadequate notice, such resignation shall be liable to be construed as a misconduct and may entail any of the punishments prescribed under Regulation 43. Hence in this case, the action of the management of striking out the name of the complainant and preventing from resuming duty on account of long absence without permission amounted to termination of service for misconduct. Section 33(2)(b) of the Industrial Disputes Act was therefore squarely attracted to the termination in this case and hence it was obligatory on the part of the Corporation to apply for approval of the action to the Tribunal before whom CGIT Reference No. 18 of 1986 was pending. Admittedly no such approval was sought by the Corporation nor were other pre-conditions contemplated by the proviso to section 33(2)(b) were complied with Section 33 was thus contravened and the complainant was entitled to invoke section 33A of the Industrial Disputes Act. Not only section 33 was contravened but admittedly no enquiry was held against the complainant before the punishment of termination of service was inflicted on him. That however, would not entitle the complainant to be reinstated in service straightway. The management would be entitled to prove the charge before this Tribunal and justify its action.

8. The documents filed by the complainant himself completely establish that he remained absent without permission for nearly 6 months. As mentioned above, after the complainant was not allowed to resume duty he made a representation to the Manager, Bombay Airport (Cargo), Sahar on 8th October, 1987. It reads as follows:—

"Dear Sir,

Due to the serious ill health of my father at native place—Nepal, I had to rush to look after him and do the needful. In this connection I had informed my superior before leaving to Nepal.

I have once again sent intimation to my shift duty officer to say that I would not be attending duty for some time till my father returns to normal health.

I have in the meantime received a letter from the Time Office informing me that my services are treated as voluntarily abandoned which was surprised to me. I come back to office and called at Admin. Office where I understood I cannot be permitted to resume duty due to the reason mentioned above.

For your kind information as a matter of fact I had no intention to abandon my services and the steps taken by the Personnel office to proceed against me to treat my services as abandoned are unjustified and also would be considered anti-labour activity.

I would, therefore, once again request you to permit me resume my duties immediately and I shall be thankful for your kindness.

Thanking you."

The above representation was replied to by the Personnel Officer (E), Establishment Division, Human Resources Development Department by letter dated 24th October, 1987. The letter reads as follows:—

"Dear Sir,

We refer to your letter dated October 08, 1987, addressed to the Manager, Bombay Airport (Cargo), Sahar.

2. We have examined the contents of your letter and find that there is no justification to consider your request to permit you to resume duties.
3. You should not have left Bombay for Nepal without informing any one in the section in which you are working. We have been informed that your contention that you had informed your Superior, before leaving for Nepal, is not correct and you have not substantiated it.
4. It has also been ascertained that you never sent any intimation to your Duty Officer that you will not be attending duty. In case you have any proof to establish the fact that you had sent any intimation in writing by post, you are required to produce the same to substantiate your statement.
5. You have admitted that you received a letter from the Time Office informing you that your services have been treated as voluntarily abandoned. You received the letter from Time Office in July, 1987. You did not care to reply to the communication sent to you by the Time Office. You allowed more than 2-1/2 months to elapse, after the receipt of the letter from the Time Office, without taking any initiative to reply to the letter of Time Office. This clearly shows that you are not interested in the job.
6. Your non-action has shows that your intention was to remain absent without permission from March 30, 1987 and hence, the action taken by Time Office in treating your services as voluntarily abandoned by you, with effect from the date of your unauthorised absence, is justified.
7. In view of the facts explained above, we reiterate that we are not in a position to permit you to resume duties.

Yours faithfully."

9. This correspondence clearly establishes that inspite of repeated intimations the complainant did not resume duties. It is pertinent to note that even by the last communication dated 24th October, 1987 the workman was called upon to

produce any proof, if he had any, to establish that he had sent any intimation in writing by post. There is nothing to show that the workman responded favourably to this notice. As mentioned above the workman remained absent at the hearing of the complaint and did not lead any evidence to substantiate his contentions that illness of his father and his own illness prevented him from resuming duty till 1st October, 1987 and that he had duly intimated the concerned officers of the Corporation that the illness of his father compelled him to leave for Nepal suddenly and that he could not resume duty for the above mentioned reasons. There is nothing to show that he had sent any communication to the management during his long absence. He did not file any such documents alongwith his complaint. The mis-conduct of long absence without permission must therefore be deemed to have been established.

10. The management has not inflicted the extreme penalty of dismissal from service. The management will be deemed to have discharged him for mis-conduct. Under the circumstances this punishment cannot be said to be unduly harsh, and it would meet the ends of justice if the management is directed to pay to the complainant besides the amount payable on discharge, compensation, equivalent to one month's wages for each year of completed service. Accordingly the management is directed to pay to the complainant within one month from the publication of this Award, besides the amounts payable to the complainant on account of discharge. Compensation, equivalent to one month's wages for each year of completed service. Award accordingly.

M. S. JAMDAR, Presiding Officer

[No. L-29025/1/86-D.II(B)]

नई दिल्ली, 7 फरवरी 1989

का.प्र. 393.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारत गोल्ड माईन्स लि. के प्रबन्धन से सम्बन्धित विवादों और उनके कर्मचारों के बीच, प्रबन्ध में निविष्ट केन्द्रीय सरकार औद्योगिक प्रधिकरण, बंगलूर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 31-1-89 को प्राप्त हुआ था।

New Delhi, the 7th February, 1989

S.O. 393.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Bangalore, as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Bharat Gold Mines Ltd. and their workmen, which was received by the Central Government on the 31st January, 1989.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM-LABOUR COURT AT BANGALORE

Dated 25th January, 1989

Central Reference No. 7/88

PRESENT:

I PARTY

Sri Gunasegaran,
Senior Vice President,
BGML Labour Association,
No. 42, N. T. Block, Oorgaum,
Kolar Gold Fields.

Vs.

II PARTY

The Chairman-cum-
Managing Director,
M/s. Bharat Gold
Mines Ltd.,
Oorgaum Post,
K.G.F. 563120.

APPEARANCES :

For the I Party Shri Y. Joyel Martin, Advocate.

For the II Party Shri K. J. Setty, Advocate.

AWARD

By exercising its powers under Section 19(1) (d) and (2A) of the I.D. Act., 1947, the Government of India, Ministry of Labour has made the present reference on the following point of dispute by its Order No. L-43012/31/87-D. III(B) dated 19th February 1988.

POINT OF REFERENCE

Whether the dismissal of Sri Gunasegaran, General Labourer, I. No. 1438 of Mysore Mines from the services from 4-10-1986 by the management of M/s. Bharat Gold Mines Limited, Oorgaum, K.G.F. is justified. If not, to what relief is the workman entitled to?"

2. The I party workman has filed his claim statement and inter alia, he has stated as follows :

On 20-6-1985 at about 2.30 p.m. when he came out from the underground, a member of the watch and ward department picked up a shirt which was lying on a pipe and then a spot manazar was made and a false case was foisted against him. It is alleged that then he was taken to the BGML hospital and X-ray was taken. It revealed some opaque body in his pelvic region and that then Dr. Pai was called and it was removed. It is all a false case. He was not found in possession of any GBQ piece. It is admitted that Bhisam Singh, Special Duty watchman No. 471 felt something in his left pocket, he took it out and found it to be GBQ pieces and powder. There are watchmen even for the underground. It cannot be believed that a bundle was found in his pelvic region. He was not given an opportunity to defend himself. He is not aware of any panchanama. He did not understand English. He is illiterate. The Enquiry Officer has committed error. The evidence was not corroborated. Charges were not proved. The dismissal order is arbitrary and improper. The Enquiry Officer has acted as a prosecutor and a judge. He was an active trade union worker and for some ulterior motive, a story is connected. He has put in 8 years of service. He has got parents, wife and three children. He may be ordered to be reinstated with all the consequential benefits.

3. The II party has filed its counter statement and inter alia, it has stated as follows.

He committed theft of employer's property on 26-6-1985. It is not correct to say that a member of the watch and ward picked up a shirt lying on the pipe the I party was caught red handed. GBQ pieces and powder were found in his shirt. A mahazar was prepared. It is not correct that he was threatened to put his signatures. On further suspicion he was taken to BGML hospital, when X-ray was taken. Some opaque body was found in his pelvic region. Dr. Pai removed it from his rectum and found a bundle of sponge gold wrapped in a piece of cloth. It is incorrect that a false case has been filed against him. There is no contradiction in the statement of Disembar Singh. It is not correct that he was not given opportunity to defend himself. At the commencement of the enquiry, he pleaded guilty, but with a view to give him opportunity, evidence has been recorded and he was permitted to cross-examine the witnesses. He has not produced any witness. The proceedings were translated and explained to him in his own language. The findings of the Enquiry Officer are based on evidence produced on record. Order of dismissal is proper and justified. He was given the assistance of a co-employee. The other allegations made by him are not correct. The reference may be rejected.

4. In view of the said pleadings, one additional issue was raised as shown below. It was taken up as a preliminary issue.

"Whether the Second Party proves that it has held the domestic enquiry in accordance with law?"

5. The management then examined the Enquiry Officer, MW-1 and got marked Exs. M-1 to M-12.

6. The workman examined himself and got marked Ex. W-1.

7. The parties were heard.

8. By a considered order dated 30-12-1988, it has been held that the management has proved that the domestic enquiry is in accordance with the law.

9. The parties were called upon to adduce further evidence, if any, and then argue the matter. Both the parties have submitted that there is no additional evidence. They have been heard.

10. My finding on the point of reference is as follows.

The management of M/s. Bharat Gold Mines Limited, Oorgaum, K.G.F. was justified in dismissing Sri Gunasegaran, General Labourer, I. No. 1438 of Mysore Mines with effect from 4-10-1986 and that he is not entitled to any relief.

REASONS

11. In Para 6 of the claim statement, it has been stated that the Enquiry Officer has committed material error in not understanding the nature of the case and that he has taken account of the fact that the evidence on record is not corroborated and that the charges are not proved. In substance, the I party workman intends to contend that the findings of the Enquiry Officer are perverse.

12. Perversity has two tests. The first test is whether the findings of the Enquiry Officer are based on no evidence. The second test is whether any reasonable person could have arrived at the findings complained of on the basis of the evidence produced before him.

13. The report of the Enquiry Officer is at Ex. M-6. The evidence recorded by the Enquiry Officer is at Ex. M-5. The recording of evidence has commenced on 3-9-1985. The first witness examined by him is Bhisamber Singh, watchman of the Watch and Ward Department. The second witness examined is Bramuram Havildar. The other witnesses examined for the management are Sundarajan, Supervisor, Jeevarattinam, Banksman, Dr. Pai, Deputy C.M.O., Shantakumar, Senior Mining Engineer and Dwarakanath, the Chemist. Thereafter, the Enquiry Officer has recorded the statement of the workman himself. The Enquiry Officer has taken into account the panchanama dated 26-6-85. The learned counsel for the I party has not pointed out to any of the aforesaid oral or documentary evidence to reinforce his argument that the findings of the Enquiry Officer are based on no evidence. On going through the said evidence, it is obvious that the Enquiry Officer has admitted on record only the legal evidence. No portion of the same can be said to have been wrongly admitted.

14. The evidence of the first witness Bhisamber Singh discloses that on 26-6-85, he was on duty and at about 2.30 p.m. he searched the person of Gunasegaran, the I party workman and felt that there was something in his left side shirt pocket and when he searched the pocket there were GBQ pieces and GBQ powder and therefore he immediately reported the matter to the Havildar, Bramuram and he in turn reported to Sundarajan and that Sundarajan then came to the spot. It further appears in his evidence that the duty agent Shantakumar was also called and then Jeevarattinam Banksman searched Sundarajan and nothing was found with him. He further states that then Sundarajan searched the I party workman Gunasegaran but found nothing at that time. It further appears in his evidence that thereafter all of them went to the hospital and that Dr. (Mrs.) Gowda examined the I party workman and she found something and therefore she called Dr. Pai. He further states that Dr. Pai removed some opaque substance from the rectum of the workman and that it contained some GBQ powder and GBQ pieces and the material was then sealed and seized. The questions put to MW-1 Bhisamber Singh are as to how he could identify that it was gold and whether he found the shirt on his person. The witness has stated that since the material was shining, it was

gold and that he found his shirt on his hand and not on his person. The evidence of MW-2 Bramuram, MW-3 Sundararajan, MW-4 Jeevarattinam corroborate the evidence of MW-1 Bhishemnar Singh. MW-2 Bramuram has been questioned whether he was wearing the shirt when the search was made. The witness has stated that the shirt was on him, none when it was searched and in a pocket there were GBQ pieces. Neither the workman's representative nor the I party workman has cross-examined the fourth witness Sundararajan, the Supervisor. The questions suggested to Jeevarattinam are whether permission had been taken from superior officers for conducting the search. The witness has stated that the permission of the superior officers were taken to take him to the BGMIL hospital for screening. Nothing transpires in the cross-examination of these witnesses to discredit them. The evidence of Dr. Pal discloses that on that day when the workman was brought to the hospital, he was taken to the X-ray department and on screening him radio-opaque foreign body was noticed in his pelvic region and then X-ray was taken and subsequently he removed the foreign body from his anus and handed over the same to the officers. There has been no cross-examination and his evidence has gone unchallenged. The evidence of Shantakumar, the senior mining engineer further substantiates the evidence of the earlier witnesses. Neither the workman nor his representative have cross-examined him. The panchanama was produced before the Enquiry Officer by Sundararajan, the Supervisor. The next witness examined for the management is Dwarakanath, the Chemist. His evidence shows that on 26-6-1985, the I party workman Gunasegaran and the property had been taken to him and he opened the packets and in bundle No. 1, there was a paper packet containing GBQ and it weighed 2.3 grams. He further states that some sample weighing 0.36 grams was taken and he valued the same at Rs. 5.34 P. He further states that then he opened bundle No. 2 and found there was 13 grams of material and he took 3 grams for sample and its value was Rs. 1,854.86 P. In his statement made before the Enquiry Officer, the I party has admitted to his guilt. He has further stated that there is no enmity between himself and any prosecution witness. On going through the oral and documentary evidence, it would be obvious that the findings of the Enquiry Officer are supported by legal evidence and it cannot be said that no reasonable person could have arrived at the said finding on the basis of the evidence produced before him.

15. A second show cause notice was issued to him and he had given his explanation as per Ex. M-8. Ex. M-9 is the order of dismissal passed by the management. Ex. M-10 is his appeal. Ex. M-11 is the order passed by the Appellate Authority. The order of dismissal at Ex. M-9 and the order passed by the Appellate authority, Ex. M-11 show that the authorities considered his explanation and found that the case did not call for any interference with the findings of the Enquiry Officer.

16. The learned counsel for the I party contended that the workman has a big family and that the management has not proved its case and that he may be reinstated even without back wages. The II party management has established that the I party workman has indulged in theft of the employer's property. I do not find any extenuating circumstances. In my view it is not a fit case to invoke provisions of Section 11A of the I.D. Act.

17. In the result, an award is passed to the effect that the management of M/s. Bharat Gold Mines Limited, Oorgaum, K.G.F. was justified in dismissing the services of Sri Gunasegaran with effect from 4-10-1986 and that he is not entitled to any relief.

(Dictated to the Personal Assistant, taken down by her, got typed and corrected by me.)

B. N. LALGE, Presiding Officer

[No. L-43012/31/87-III(B)]

V. K. SHARMA, Desk Officer

नई दिल्ली, 6 फरवरी, 1989

का.पा. 394.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार उत्तर रेलवे के प्रबंधन से सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निविदा औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-1-89 का प्राप्त हुआ था।

New Delhi, the 6th February, 1989

S.O. 394.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Northern Railway and their workmen, which was received by the Central Government on the 30-1-89.

ANNEXURE

BEFORE SHRI ARIAN DEV. PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, KANPUR

Industrial Dispute No. 59 of 1988

In the matter of dispute :

BETWEEN

The Zonal Working President,
Uttar Railway Karamchari Union,
96/196, Roshan Bajaj Lane,
Ganeshganj,
Lucknow.

... Petitioner

AND

The Divisional Railway Manager,
Northern Railway,
Hazratganj,
Lucknow.

... Opp. party.

AWARD

1. The Central Government, Ministry of Labour, vide its notification No. L-41011/37/86-D. II(B) dt. 10-5-1988, has referred the following dispute for adjudication to this Tribunal for adjudication :—

"Whether the action of the Divisional Railway Manager, Northern Railway, Lucknow in not appointing Shri Uma Shanker and 28 others on regular basis is justified? If not, to what relief the workmen concerned are entitled?"

2. In the present case on 9-12-88 Shri B. D. Tewari moved an application for withdrawal of the case on the ground that the 29 workmen in respect of whom this industrial dispute has been raised have already been regularized in service by the management. The application was, therefore allowed. As such there remains no dispute with regard to 29 workmen mentioned in para no. 7 and 8 respectively.

2. As such a no claim award is being given in the case.

ARIAN DEV, Presiding Officer

[No. L-41011/37/86-D. II(B)]

नई दिल्ली, 7 फरवरी, 1989

का.पा. 395.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार उत्तर रेलवे के प्रबंधन से सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निविदा औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-1-89 प्राप्त हुआ था।

New Delhi, the 7th February, 1989

S.O. 395.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Northern Railway and their workmen, which was received by the Central Government on the 30th January 1989.

ANNEXURE

BEFORE SHRI ARJAN DEV PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
KANPUR U.P.

Industrial Dispute No. 110 of 1987

In the matter of dispute :

BETWEEN

The Zonal President

Uttar Railway Karamchhari Union
96/196 Roshan Bajaj Lane
Ganesh Ganj

Lucknow, U.P.

AND

The Deputy Chief Mechanical Engineer

C & W Shop

Northern Railway

Alambagh

Lucknow U.P.

AWARD

1. The Central Government, Ministry of Labour, vide its notification No. L-41012/56/85-D.II(B) dated 9th August, 1987 has referred the following dispute for adjudication to this Tribunal :

Whether the Action of the management of Dy. CME Northern Railway in non-regularising the services of Shri Raghunath Prasad, Typist and not giving him seniority w.e.f. March 1971, is justified? If not to what benefits the workman concerned is entitled?

2. In this case the Industrial Dispute on behalf of the workman Shri Raghunath Prasad has been raised by Uttar Railway Karamchhari Union, (hereinafter referred to as Union).

3. The case set up by the union is that Shri Raghunath Prasad, was appointed as peon on 27-1-55. He was promoted to the post of Typist on 9-3-71, when there occurred a vacancy of Typist. Since then he has been working as Hindi & English Typist and has been getting by way of incentive Rs. 20 per month. He is being denied for regularisation of the services as Typist and seniority in the pay scale of Typist on the ground of his alleged promotion on Adhoc basis. This is against recognised principle of Social Justice. The General Manager (P) vide his letter No. 752-E/552-46 dated 17-10-83, copy annexure II to the claim petition directed the D.R.M. Lucknow to regularise the services of Enquiry & Reservation Clerks who had worked on Adhoc Basis for 3 years upto 6-7-83. Therefore, on the said principle the services of Shri Raghunath Prasad, should also be regularised w.e.f. 9-3-74, and he should be declared senior to S/Shri Naresh Kumar Sharma, Mohit Ram, Abbas Aqeel Ahmed etc.

4. In defence, the management plead that the workman who was appointed as a peon on 27-1-55, in the pay scale of Rs. 30-35 was promoted as Typist on Adhoc basis in the grade of Rs. 110-180 (AS)/(260-400)(RS), purely as a local arrangement pending proper selection to be conducted by D. S. Lucknow. The post of Typist in the aforesaid scale is a selection post. These posts are filled to the extent of 33-1/3 per cent from amongst class-IV Staff and to the extent

of 66-2/3 per cent by direct recruitment through Railway Service Commission. The workman appeared in the speed test in English Typing on 22-6-76, but did not qualify. He was therefore, advised to give his option for Hindi Typing vide D.S. letter No. 220-E/6-3/Typist dt. 26-6-78. The workman appeared in Hindi Typewriting Test on 11-8-78, but again he could not qualify in it. Third time he appeared in the said test on 15-11-81 but was declared unsuccessful. The D.R.M. again fixed 12-7-85, as a date for holding test and invited applications from Class IV staff but the said test could not be held on account of an Interim Stay order obtained by one of the candidates from Hon'ble High Court Allahabad (Lucknow Bench). As such the workman is still working as Typist in the pay scale of Rs. 260-400 on Adhoc Basis purely under a Local Arrangement. The Railway Board vide its letter No. E(MG)/1-82-PM-1-152 dated 9-7-82, has again clarified that normal rules for selection have got to be followed in regularisation of the cases of adhoc promotions and that the employees officiating on adhoc basis on higher post have got no right to be selected and included in the panel for these posts without passing the selection test. Again Railway Board vide its letter No. E-(D&A) 85-RC-6-9 dated 20-4-85 has further clarified that a person officiating on adhoc basis on a higher post can be reverted at any time without assigning any reason if he does not qualify in the selection when a duly selected person is available to replace him. The management further plead that with a view to promote Hindi in Government Offices and to trained Staff in Hindi, Hindi Typewriting under an Official Language Policy, the Ministry of Home Affairs, introduced Hindi Typewriting classes for Govt. Servants not knowing Hindi Typewriting and Hindi Stenography and as an incentive have provided a lumpsum award an advance increment on the passing of these examinations by the Govt. Servants. The mere passing these examinations under this scheme by the workman has no relevancy so far as the Departmental Selection is concerned. This will not exempt the workman from passing the Departmental Examination. On the one hand he is willing to appear in the selection of Typist and on the other hand he is agitating that he should be selected without passing the test. He cannot blow hot and cold in the same breath. Thus by his conduct he is stopped from agitating the matter before the Tribunal. He cannot be treated as a regular typist w.e.f. 9-3-71 nor he is entitled to claim seniority w.e.f. that date.

5. In its rejoinder the Union has not challenged the fact that vacancy of typists are to be filled to the extent of 33-1/3 per cent from amongst class IV staff. The Union has further not challenged the fact about the workman having failed in the various tests held by the Divisional Superintendent, Northern Railway, Lucknow. According to the Union, although the workman passed the typing test but he was failed deliberately in the written test.

6. In support of their case, the management filed the affidavit of Shri Jagdish Narain A.P.O. Northern Railway Lucknow, and a number of documents. On the other hand, in support of his case the Union filed the affidavit of the workman and relied on a number of documents filed with the claim statement.

7. The admitted position in this case is that Shri Raghunath Prasad, the workman in question, was appointed as a peon on 27-1-55 was promoted as typist on 9-3-71 and that since then he has been working as typist. There is also no dispute about the fact that the various tests held by Divisional Superintendent Northern Railway, Lucknow for the post of Typist, he could not qualify in one part or the other. The last test which was to be held on 12-7-85, could not be held because of the Interim Order of Stay obtained by one of the candidate from the Hon'ble High Court (Lucknow Bench). This fact has been admitted by the workman in his cross examination.

8. Ext. M-16. is the copy of letter No. 831-F/63/2-ST-(B-IV) dated 18-8-82, from General Manager (P), New Delhi, to all concerned with regard to Selection for Promotion of Class III Staff Adhoc Promotees. In the said letter extract from the record note of the meeting held by the Dy. Minister for Railways and the Railway Board with the Heads of the Personnel Departments of the Railway Administration

was referred. "2.2. Panels should be formed for selection posts in time to avoid adhoc promotions. Care should be taken to see while forming panels that employees who have been working in the post on adhoc basis quite satisfactorily or not declared unsuitable in the interview. In particular any employee reaching the field of consideration should be saved from harassment."

With regard to the above observation the General Manager(P) observed that there was no intention to confer any right on employees officiating on ad-hoc basis in higher post to be selected and include in the panels for these posts.

9. Ext. M-17 is the copy of letter No. E(DA)85-RG-6-9 dt. 20-4-85, from the Railway Board to the General Manager of All Indian Railways. It was on the subject of reversion on grounds of general unsuitability of staff officiating in a higher grade or posts on Adhoc basis. After referring the explanation below Rule (6) of the Railway Servants (Disciplinary & Appeal) Rules, 1968, and various confidential letters it was stated that in these letters it has been laid down that a person who is permitted to officiate in higher post or beyond 18 months should not be reverted for unsatisfactory work without following the procedure prescribed in the D.A. Rules. It was further stated that the protection extended would be available only to those employees who have acquired a prescriptive right to the officiating post by virtue of their impanelment or by reason of their having been formally declared suitable by the competent authority. It does not extend to those officiating on promotion on adhoc basis. On the basis of the above two circulars it has been urged on behalf of the management by Shri Chauhan, that the workman cannot claim regularisation nor can claim seniority in the typist grade.

10. On the other hand, Shri Tiwari, has argued that here is the case of the workman who has been working as a typist since 9-3-71 i.e. for the last about 17-1/2 years. His case is to be examined differently. He has invited my attention to annexure II to the claim petition which is the copy of letter No. 752(F)/662-46 EIC dated 17-10-83, from the General Manager (P) New Delhi, to D.R.M. N. Rly, Lucknow. The copy of this letter has been proved by the workman by his affidavit. Although it has been referred to in the claim statement that there is no specific denial about its existence. Therefore, this letter was written in reply to DRM's letter dt. 14-9-83. The General Manager (P), informed the D.R.M. that he should adjust them against promotee quota. Shri Tiwari, has therefore, contended that if this rule of 3 years could apply to Enquiry & Reservation Clerks then why it should not apply in the case of typists working on adhoc basis.

11. To further support his point Shri Tiwari has placed reliance on the ruling in the case of Shri Narendra Chhadha and others V Union of India and others 1986 SCC I&S 226. I have gone through the ruling carefully and find that it applies with full force to the facts of the present case. The dispute before Their Lordships of the Hon'ble Supreme Court was with regard to Direct Recruits and Adhoc Promotees who are found working for the last so many years. In para 14 it was observed by their Lordships held that it is now well settled that it is permissible for the government to recruit persons from different sources to constitute a service. It is also open to it to prescribe a quota for each source. It is also true that when the Rules of recruitment prescribe recruitment from different services in accordance with the specified quota the Government is bound to appoint persons to the Service concerned in accordance with the said Rules. Their Lordships remarked that in the case before them they were faced with the problems of resolving conflicts which have arisen on account of a violent departure made by the Government from the Rules of recruitment by allowing those who were appointed contrary to the Rules to hold the posts continuously over a long period of time. It is true that the petitioners before them were not promoted by following the prescribed procedure. They have not been asked to go back to the post from which they were promoted at any time since the dates of their appointment. It is significant that neither the Government have issued orders of reversion to their former post nor has any body so far questioned the right of the petitioners to continue in the post which they are now holding. It would therefore, be unjust to hold at this distance

of time that on the facts and in the circumstances of the case the petitioners are not holding the posts in Grade IV. It would certainly be unjust to say that they have no sort of claim to such post and they could be reverted unceremoniously or treated as persons not belonging to service at all particularly where the government is endowed with the powers to relax the rules to avoid unjust results.

12. In the instant case we have seen that in the case of ERC (Enquiry cum Reservation Clerks) the rules were relaxed. If it could be relaxed in their case why not it should be treated as relaxed in the case of the present workman. This fact that he has been appearing in the various test held by the D. S. Northern Rly. Lucknow, has no meaning nor it can operate as an estoppel against the workman. We are dealing with the cases of workmen most of whom do not know what their rights under law.

13. I, therefore, consider it to be a fit case where the workman should be treated as having been regularised in service as typist w.e.f. 9-3-74 as prayed by the Union on his behalf in the claim statement and give seniority w.e.f. the said date.

14. It is accordingly held that the action of the management of Dy. C.M.E. Northern Railway in non regularising the services of Shri Raghunath Prasad as Typist is not justified. He will be deemed to have been regularised as Typist w.e.f. 9-3-74, and will be entitled to claim seniority in the grade of Typist w.e.f. said date.

Dt. : 12-12-80

ARJAN DEV, Presiding Officer
[No. L-41012/56/85-D.II(B)]

का.प्र. 396---औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार उत्तर रेलवे के प्रबंधन से सम्बन्धित नियोजकों और उनके वर्कमैनों के बीच, संतुलन में निम्नलिखित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिपक्ष, कानपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-1-89 को प्राप्त हुआ था।

S.O. 396.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Northern Railway and their workmen, which was received by the Central Government on the 30th January 1989.

ANNEXURE

BEFORE SHRI ARJAN DEV, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, KANPUR, U.P.

Industrial Dispute No. 43 of 1986

In the matter of dispute between :

Shri Ram Niwas & others

Co/ The Zonal President

Uttar Railway Karamchhari Union

96/196 Roshan Bajaj Lance

Ganesh Ganj,

Lucknow

...Petitioners

AND

The Divisional Superintendent Engineer (II)

Northern Railway

Hazaratganj,

Lucknow.

...Opp. party

AWARD

1. The Central Government, Ministry of Labour, vide its notification No. L-41011/2/85-D.I(B), dated 1-2-86, has referred the following dispute for adjudication to this Tribunal :

Whether the action of the management of Superintendent Engineer, Northern Ry. Lucknow in respect of four workmen S/Shri. Ram Niwas, Ram Mohan, and Karam Singh Krishan even after revocation of their suspension orders is legal and justified? If not, to what relief the workmen are entitled to?

2. The industrial dispute in this case on behalf of four workmen named in the reference order has been raised by Uttar Railway Karamchhari Union (hereinafter referred to as URKU for the sake of convenience). The case of the Union on behalf of these four workmen is that on 6-3-84, at about 3 p.m. Shri N. L. Das, PWI, Barabanki came at the site where Gang No. 64 was working. The said PWI took work from the gangmen upto 5 p.m. and thereafter started discussing with them about the permissibility of more than one gangman going on leave on one single day. Gangmen replied that he (PWI) had himself given a limit of 3 gangmen going on leave at a time on one single day when Railway Rules permit 25 per cent leave reserved strength. On hearing the said reply PWI felt enraged and left the place threatening S/Shri Ram Niwas, Gangman, Sriram Mate, and Shri Mohan Gangman with dire consequences. The Union lodged a complaint with the Divisional Superintendent Engineer (II) against the said misbehaviour of PWI. The copy of the complaint is Annex. I to claim petition. The Div. Suptd. Eng. (II) took no action on the complaint of the Union while PWI suspended the above named 3 persons. Copy of the suspension order of Shri Ram Niwas Singh is annexure III to the claim statement. However, the said suspension was later on revoked vide letter dt. 11-4-84, by the Asstt. Eng. II. The order of revocation of suspension order was communicated to the workmen on various dates between 16-5-84 and 18-5-84. The copy of the said letter of revocation is annexure IV to the claim statement. Upon revocation of the suspension order the workmen resumed duty on 18-5-84. At that time or even thereafter no ruling under Rule 2044 Railway Establishment Code Vol. II was recorded by Railway Authority. Hence, the workmen are entitled to pay for the period of suspension. It is further alleged by the Union that the Asstt. Eng. II has held ex parte enquiry against the workmen on some charges and had issued a show cause notice for removal from service during the pendency of these proceedings.

3. The management, on the other hand, plead that at the time of checking of work done by Gang no. 64 at 2.30 p.m. on 6-3-84 P.W.I. Barabanki, who was accompanied by Shri Rajmani Upadhyaya Sectional PWI found the work of the Gang far from satisfactory. He, therefore, called Shri Maiku, officiating mate, and told him about the bad quality of work. P.W.I. also told him how he had allowed four workmen to go on leave when he (PWI) had specially instructed him that not more than 2 men be allowed to avail leave the same day. While P.W.I. was talking to the said mate Shri Mohan and Shri Ram Niwas Singh came and interrupted which was not liked by P.W.I. who asked them to mind their own business. Instead of listening to his advice they became angry and used filthy language and misbehaved with him thereby creating ugly situation at the site. On the report dt. 6-3-84, of P.W.I. Barabanki, the Div. Suptd. Engg. (II) vide his office letter dt. 12-3-84 ordered that the above named two gangmen be placed under suspension. Consequently, vide letter dt. 14-3-84 of Asstt. Engg. (ii) they were placed under suspension. Later on their suspension was revoked vide letter dt. 11-4-84 of the Asstt. Eng. II. An inquiry under Railway Servant (Dis. Appeal) Rules 1968, was instituted against the said two workmen and the E.O. found them guilty of misconduct/misbehaviour, with PWI Barabanki. Since the said two workmen had been paid subsistence allowance as per rules they are not entitled to wages for the suspension period. The inquiry was under process when the industrial dispute was raised. The inquiry has been conducted in a fair and legal manner.

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4. In the rejoinder the Union has alleged that the Enquiry Officer was not duly appointed nor enquiry was duly conducted in accordance with the principles of natural justice. Suspension having been revoked without further proceedings and in disregard of Rule 2044(5) of the Railway Estab. Code-II, workman was entitled to wages for suspension period.

5. In support of its case, the union has filed the affidavit of Shri Ram Niwas Singh and a few documents which are Ext. W-1 to Ext. W-6. These documents were filed with the claim statement by the Union. On the other hand, the management have filed the affidavit of Shri M. L. Bajpai Asstt. Suptd. AEN/II/LKO, and a number of documents marked as Ext. M-1 to Ext. M-17.

6. The first question to be considered in this case is how many workmen are actually involved. The reference is about 4 workmen, namely, S/Shri Ram Niwas, Sriram, Sri Mohan and Sri Krishan. In the claim statement the union has only referred to 3 of them, namely, Shri Ram Niwas Singh, Sri Ram and Shri Mohan. On the other hand, according to the management only two workmen, namely, Shri Ram Niwas Singh & Shri Mohan are involved. I may state here that Sri Ram, one of the workmen named in the reference order, is admittedly dead. On 18-2-87, the Union moved an application for amendment of the claim statement and in it, it was alleged by the union that Sri Sriram had expired. Against the amendment application the management filed objection in which the management stated that Sri Ram expired in February, 1986.

7. On this point, the Union has corroborated its case by means of affidavit of Shri Ram Niwas Singh who unfortunately could not be cross examined by the management side on account of non appearance of any body from the side of the management to cross examine him. But there is no documentary evidence to support the fact that Sri Ram (Since deceased) was also suspended and his suspension order was revoked subsequently. The Union has simply filed the copy of letter dt. 20-3-84 Ex. W-3 from P.W.I. Barabanki, informing Shri Ram Niwas Singh about his suspension with immediate effect. Similarly the Union has filed the copy of letter dt. 28-4-84 Ext. W-4 of P.W.I. Barabanki informing Shri Ram Niwas Singh about the revocation of his suspension order.

8. On the other hand, the management witness Shri M. L. Bajpai has corroborated the management's case on this point. The management's case finds corroboration from various documents filed by the management Ext. M-1 is the photostat copy of the telegram dt. 6-3-84 from P.W.I. Barabanki to AEN II and DSE II complaining about the alleged misbehaviour of Shri Ram Niwas Singh and Shri Mohan; Ext. M-IV is the copy of letter dt. 14-3-84 of AEN-II ordering suspension of the said two workmen of gang number 64; and Ext. M-V and Ext. M-VI are copies of chargesheet which were served on the said two workmen.

9. Thus from the above evidence it is established that the workmen affected are Shri Ram Niwas Singh and Shri Mohan and no other workmen. The reference about Shri Sriram (since deceased) and Sri Krishan is misconceived. The point is decided accordingly.

10. There is no dispute between the parties on the point that the above named two workmen were suspended and their suspension orders were revoked subsequently. The question is whether they are entitled to full wages of the suspension period or not.

11. From the pleadings of the parties it is clear that the matter did not stop against the above named two workmen after revocation of their suspension order. Rather inquiry was held into their alleged misconduct by the Enquiry Officer and the Enquiry Officer found them guilty of misconduct with PWI Barabanki. The two charge sheets, copies of which are Ext. M-V and Ext. M-VI, have already been referred to by me. Ext. XVI is the copy of report dt. 6-2-86 of Shri S. P. Arya E.O. All that has been alleged by the Union is that there was no valid appointment of the E.O. and that the E.O. has acted in an unfair manner. Reliance on behalf of workmen has been placed on rule 2044(5) of the R.E.C. Vol. II Sub-Rule (5) lays down that in a case falling under sub Rule (4),

the period of absence from duty including the period of suspension preceding his dismissal removal or compulsory retirement as the case may be, shall be treated as a period spent on duty, unless the competent authority specifically directs that it shall be so treated for any specified purpose. Proviso II of this sub rule lays down that if the Railway Servant so desires such authority may direct that the period of absence from duty including the period of suspension preceding his dismissal etc., as the case may be, shall be converted into leave of any kind due and admissible to the railway servant. Sub Rule (4) says that in cases other than those covered by sub rule (2) including cases where the order of dismissal, removal, or compulsory retirement from service is set aside by the authority or reviewing authority solely on the ground of non compliance with the requirement of Article 311(2) of the Constitution, the railway servant shall subject to the provisions of Sub Rule (6) & (7) be paid such proportion of full pay and allowance to which he would have been entitled had he not been dismissed, removed or compulsory retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be as the competent authority may determine, after giving notice to the railway servant of the quantum proposed and after considering the representation, if any, submitted by him in that connection.

12. Thus Sub Rule (5) of Rule 2044 of the Railway Establishment Code comes into play only when final orders have been passed in the disciplinary proceedings. Had the Disciplinary authority contemplated no action after revocation of the suspension order of the two workmen, the workmen would have been surely entitled to full wages of the suspension period. But since in this case the disciplinary proceedings have been taken no cause of action arises in the matter until the disciplinary authority passes an order of punishment including order denying full wages to the workmen of the suspension period. Only when such an order has been passed, the workmen themselves or through their Union can raise an industrial dispute with regard to the matter in question and not before that.

13. Held that so far as Shri Ram Niwas Singh and Shri Mohan are concerned it is premature and so far as Sri Ram (since deceased) and Sri Krishan are concerned it is misconceived. The reference is answered accordingly. The two workmen, namely, Shri Ram Niwas Singh and Shri Mohan will be at liberty to raise an industrial dispute in the matter when the opportunity for the same arises in the manner stated above.

Dt. : 20-12-87

ARJAN DEV, Presiding Officer
[No. L-41011/2/85-D.II(B)]

का.प्र. 397.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अन्वय में, केन्द्रीय सरकार के प्रवर्धन से सम्बद्ध निरीक्षकों और उनके कर्मचारों के बीच, अन्वय में निहित औद्योगिक विवाद में औद्योगिक अधिकरण, मद्रास के पत्रादेश को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-1-89 को प्राप्त हुआ था।

S.O. 397.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Madras as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Integral Coach Factory, Madras and their workmen, which was received by the Central Government on the 30-1-89.

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL, TAMILNADU, MADRAS

Monday, the 5th day of December, 1988

Industrial Dispute No. 71/87

(In the matter of the dispute for adjudication under Section 10(1)(d) of the Industrial Dispute Act, 1947 between the workmen and the Management of Integral Coach Factory, Indian Railways, Madras.)

BETWEEN

The Workmen represented by
Thiru T. P. Elisha Thiruppal,
Secretary Trained Technical Staff Union,

I. C. F. No. 141,
Konnur High Road, Ayanavaram, Madras-600023.

AND

The Works Manager (A) Shell,
Integral Coach Factory,
Indian Railways,
Madras.

REFERENCE :

Order No. L-41011/1/86-D. II(B), dated 12-6-1987 of the Ministry of Labour, Government of India, New Delhi.

This dispute coming on for final hearing on Friday, the 9th day of September, 1988 upon perusing the reference, claim and counter statements and all other material papers on record and upon hearing the arguments of Thiru T.P. Elisha Thiruppal, Authorised Representative for the workmen and of Thiru A. J. D. Rozario, Authorised Representative for the Management and this dispute having stood over till this day for consideration, this Tribunal made the following.

AWARD

This dispute between the workmen and the Management of Integral Coach Factory, Indian Railways, Madras arises out of a reference under Section 10(1)(d) of the Industrial Disputes Act, 1947 by the Government of India in its orders No. L-41011/1/86-D. II(B), dated 12-8-1987 of the Ministry of Labour, for adjudication of the following issue :

"Whether the action of the Works Manager (A) Shell, Integral Coach Factory, Indian Railways, Madras in awarding the punishment of withholding of one set of privilege pass for the year 1984-85 to the three workmen namely, Shri V. Gopal, Turner, T. No. 80/1104 Shri R. Kalaiyaran, Khalasi T. No. 11/3036 and Shri V. Damodaran, Fitter, T. No. 22/1308 vide letter dated 30-5-84 is justified? If not to what relief the said workmen are entitled to?"

2. The averments in the claim statement filed by the Union on behalf of the workmen are that the three workmen who are concerned in the dispute were served with charge memos for having defaced the compound walls of the Railway Building. A charge memo was issued on common proceedings to all the three workmen for the same charges and two names were shown as witnesses without their statements. The workmen denied the charges and requested the copies of statements of the witnesses mentioned in the charge memos. The request has been refused and instead penalty advice has been received by punishing them for withdrawing one set of privilege pass for the year 1984-85. When the charges were denied, the Authority could have proceeded with the enquiry but imposing the penalty without proper Enquiry proceedings and findings thereon by the Disciplinary Authority is contrary to Sub-rule 2 of Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968. The enquiry is not necessary and the Authority can impose a minor penalty for the major charges under Sub-rule 9(1)(IV) of Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968 when the delinquent has admitted the charges and he should also be given further opportunity of making representation before the penalty was imposed. Hence the penalty imposed on the workmen without giving any opportunity violates the provisions of Railway Servants (Discipline and Appeal) Rules, 1968 and is illegal as per the Railway Board's letter dated 31-10-1974. The Authority has not given a speaking order for imposing the penalty and hence the action by the authorities is illegal. The Appellate Authority has also not considered the Railway Board's orders in respect of writing speaking orders. Out of three workmen who filed appeals against the penalty, only Thiru R. Kallaiyaran received the order on appeal and the other two workmen have not received any reply till this date. They sent notices under Section 80 C.P.C. to the

General Manager, but so far there is no reply. The issue of charge memos and the punishment imposed by the Disciplinary Authority and the Appellate Authority were unfair labour practice. Therefore prayed the orders of penalty may be set aside.

3. The Respondent-Management in their counter statement states that the three workmen were issued charge memos (major) on 2-9-1983 for having defaced the compound walls of the Administrative Office Workshop building by writing scurrilous and defamatory slogans casting unwarranted and baseless aspersions on the administration and officers. The charge memos were cancelled and subsequently, fresh action was taken as it was felt that a common disciplinary proceeding should be held in respect of all the six workmen. After considering the explanation submitted by the workman, after taking a lenient view, the Authority has imposed the penalty of withholding of one set of privilege pass. The Respondent submits that the workmen were issued charge memos for imposition of major penalty duly proposing to hold an enquiry, the imposition of a minor penalty is in order in accordance with Rule 9(9)(a)(1)(iv) of the Railway Servants (Discipline and Appeal) Rules. As per this Rule, if the disciplinary Authority is of the opinion that the imposition of a major penalty is not necessary, it may drop the proceedings already initiated by it for the imposition of major penalty, without prejudice to its right to impose any of the minor penalties, not attracting the provisions of sub-rule (2) of Rule 11. Where the disciplinary authority so drops the proceedings, but considers it appropriate to impose any of the minor penalties, not attracting the provisions of sub-rule (2) of Rule 11, it may make an order imposing such penalty and it will not be necessary to give the railway servant any further opportunity of making representation before the penalty is imposed. The Rule does not specify that the minor penalty can be imposed only where the delinquent employee has admitted the charge. The Respondent states that the appeals were received from Thiruvallargal R. Kalaiyaran and V. Damodaran and they were replied to on 3-9-1984 and 15-9-1984 respectively. Hence the claim petition may be dismissed.

4. The point for consideration is whether the action of the Management in awarding the punishment of withholding of one set of privilege pass for the year 1984-85 to the three workmen, namely, Tvl. V. Gopal, Turner, R. Kalaiyaran, Khalasi and V. Damodaran, Fitter is justified; if not to what relief the said workmen are entitled to.

5. On behalf of the workmen, Exs. W-1 to W-32 were marked and on the side of the Management Ex. M-1 marked. No oral evidence was adduced on either side.

6. It is seen from Exs. W-1, W-12 and W-21, the charge memos for the three workmen, namely, Thiruvallargal V. Gopal, R. Kalaiyaran and V. Damodaran have been issued alleging that each of them took part in defacing the compound walls of the railway buildings—ICF/Shell Administration Office/Workshop building from Villivakkam Railway Station and to Perambur Railway Hospital end on the night of 7/8-7-1983; and that they indulged in scurrilous and defamatory writings casting unwarranted aspersions of the ICF Administration and officers which are baseless on the compound walls of the railway buildings on the night of 7/8-7-1983. Each of them has failed to maintain absolute integrity and conducted themselves in a manner unbecoming of a railway servant contravening the specific instructions contained in Para 6 and 7 of AC Circular No. 22 dated 25-2-1982 in violation of Railway Services (Conduct) Rules, 1966. For these charges, replies were sent by the workmen under Ex. W-5, W-13 and W-22 denying the charges and asking for copy of statement of witnesses and documents relied on etc. Exs. W-6, W-12 and W-24 are the memorandum relating to each of the workman by annexing statement of articles of charges and intimating them that it has been proposed to hold an enquiry. As a matter of fact Thiru V. Gopal in his reply Ex. W-8 has categorically stated that he was not at that place mentioned in Annexure-1 to the charge memo on the said time and that he was actually on duty and therefore there is no question of scurrilous writing would arise by him. This worker has categorically stated that he was on duty on that particular date. After receipt of replies from three workmen, the Management straight away

passed orders under Ex. W-9, W-17 and W-28 stating that the explanation is found not convincing and therefore guilty of the charge levelled against them. However, taking a lenient view, the following penalty is imposed :

"One set of privilege pass for the year 1984-85 is withheld."

Against this order, though the appeal was filed, the appeal also met with the same fate. Apart from appeal Section 80 C.P.C. Notices were also sent by Thiruvallargal V. Gopal, R. Kalaiyaran and V. Damodaran to the General Manager. No reply was also received for the same.

7. The authorised representative for the workmen would contend that awarding or imposing of punishment for even minor misconduct without holding an enquiry is illegal. In this connection, he would refer to Sub-rule 2 of Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968. He would also contend the Authority can impose a minor penalty for the major charges without enquiry under Sub-rule 9(1)(IV) of Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968, where the delinquent had admitted the charges. On the other hand, the same rule is relied on by the Management. The authorised representative for the Management would contend that the disciplinary authority while dropping the proceedings when considers it appropriate to impose any of the minor penalties not attracting the provisions of Sub-rule (2) of Rule 11, may make an order imposing such penalty and it will not be necessary to give the railway servant any further opportunity of making representation before the penalty is imposed as per Rule 9(9)(a)(1)(iv) of the Railway Servants (Discipline and Appeal) Rules. But it is relevant to note at this stage that under Exs. W-1, W-12 and W-21 the management itself has stated by enclosing the statement of Articles of charges as Annexure-I that the under-signed of the memorandum proposes to hold an enquiry against the workmen. The memorandum also says that the enquiry will be held only in respect of those articles of charge as are not admitted and therefore he should specifically admit or deny each article of charge. In the light of this recital in the above memorandum Exs. W-1, W-12 and W-21 would show that when denial is made to the charges, an enquiry is contemplated. But in this case, admittedly, no enquiry has taken place. However, in the counter statement it is pointed out as per Rule 9(a)(1)(iv) of the Railway Servants (Discipline and Appeal) Rules, it is not necessary to give further opportunity of making representation before penalty is imposed while imposing such penalty. Strong reliance is placed on this particular clause and a close reading of rule as reproduced in the counter statement, it shows that it is not necessary to give further opportunity of making representation before penalty is imposed. But it does not specify that no enquiry is necessary at all. The further opportunity referred to in that rule is only the representation which can be made before the penalty is imposed. But it nowhere contemplates that enquiry is not necessary while a minor penalty is imposed especially when the charges are denied. It is seen Ex. W-18 is the appeal filed by one of the workmen Thiru R. Kalaiyaran against the order passed in Ex. W-17. Ex. W-20 is the order passed by the Appellate Authority stating: "The procedure laid down in the rules has been complied with, the findings of the Disciplinary Authority are warranted by the evidence on record and the penalty imposed on you is adequate and therefore I see no reason to modify the penalty imposed on you." It is seen from the above orders of penalty and that at no stage, the orders are speaking orders. In this connection, the authorised representative for the Petitioners relied on Ex. W-31, the Railway Board's letter dated 3-3-1978. It is seen from that the disciplinary authority should invariably pass "Speaking Order" indicating the reasons for the conclusion arrived at. The same procedure should also be adopted by the Appellate Authority while passing orders on the appeals of the Railway Servants. This Board's letter marked as Ex. W-31 has not been challenged. That apart, it has been well laid down that any order especially imposing a penalty should be a speaking order by giving the reasons for the conclusion. Therefore the orders of imposing penalty of withdrawing the privilege pass not containing the reasons are not valid. Viewed from any angle, the non-speaking order imposing penalty without any enquiry is not a valid order and therefore it is not binding on the workmen.

8. Therefore an award is passed that the Petitioner workmen Thiruvengal V. Gopal, R. Kalaiyarasan and V. Damodaran are entitled to one set of privilege pass for the year 1984-85. There will be no order as to costs.

Dated, this 5th day of December, 1988.

Witnesses Examined :

For both sides : None.

Sd/-

Industrial Tribunal

Documents Marked :

For workmen :

- Ex. W-1/2-9-83—Charge Memo issued to V. Gopal (xerox copy)
- Ex. W-2/25-2-82—Circular issued by General Manager (xerox copy).
- Ex. W-3/13-9-83—Representation by Thiru V. Gopal, Sr. Turner to the Management (xerox copy)
- Ex. W-4/5-10-83—Order of Chief Mechanical Engineer (xerox copy)
- Ex. W-5/7-10-83—Reply by Management to Thiru V. Gopal (xerox copy)
- Ex. W-6/11-10-83—Chargememo issued to V. Gopal (xerox copy)
- Ex. W-7/19-11-83—Reply by Management to Thiru V. Gopal (xerox copy)
- Ex. W-8/3-12-83—Representation by Thiru V. Gopal to the Works Manager (A) Shell (xerox copy)
- Ex. W-9/30-5-84—Penalty Advice (xerox copy)
- Ex. W-10/4-7-84—Reply by V. Gopal to W-9 (xerox copy)
- Ex. W-11/18-7-84—Notice from V. Gopal to cancel the penalty imposed against him (xerox copy).
- Ex. W-12/3-9-83—Charge Memo issued to R. Kalaiyarasan (xerox copy)
- Ex. W-13/10-9-83—Representation by Thiru R. Kalaiyarasan, Khalasi to the works Manager (M) Shell to Charge Memo W-12 (xerox copy)
- Ex. W-14/25-10-83—Letter from the Management to Thiru R. Kalaiyarasan informing the cancellation of Charge Memo dt. 3-9-83 (xerox copy)
- Ex. W-15/27-10-83—Charge Memo issued to R. Kalaiyarasan (xerox copy)
- Ex. W-16/10-11-83—Representation by R. Kalaiyarasan to Works Manager (A) Shell (xerox copy)
- Ex. W-17/30-5-84—Penalty Advice (xerox copy)
- Ex. W-18/12-6-84—Appeal by R. Kalaiyarasan against imposing penalty (xerox copy)
- Ex. W-19/17-7-84—Notice from R. Kalaiyarasan to cancel the penalty imposed on him. (xerox copy)
- Ex. W-20/3-9-84—Reply by Management to Ex. W-18 (xerox copy)
- Ex. W-21/3-9-83—Charge Memo issued to Thiru V. Damodaran (xerox copy)
- Ex. W-22/9-9-83—Representation by V. Damodaran to the Works Manager (A) Shell (xerox copy)
- Ex. W-23/7-10-83—Letter from the Management informing the cancellation of charge Memo Ex. W-20 (xerox copy)
- Ex. W-24/11-10-83—Charge Sheet issued to Thiru V. Damodaran (xerox copy)
- Ex. W-25/21-10-83—Representation by V. Damodaran to Works Manager (A) Shell (xerox copy)
- Ex. W-26/19-11-83—Reply to Management to Ex. W-25 (xerox copy)

Ex. W-27/1-12-83—Letter from V. Damodaran in reply to Ex. W-26 (xerox)

Ex. W-28/30-5-84—Letter from the Management imposing penalty against V. Damodaran (xerox copy)

Ex. W-29/26-5-84—Appeal by V. Damodaran against imposing penalty (xerox copy)

Ex. W-30/26-7-84—Notice from V. Damodaran to cancel the penalty imposed on him (xerox copy)

Ex. W-31/3-3-78—Railway Board's letter No. E(D&A)78 R.G. 6-(ii) (xerox copy)

Ex. W-32/21-10-83—Representation from V. Gopal denying the charges levelled against him (xerox copy)

For Management :

Ex. M-1/15-9-84—Reply by Addl. Chief Mechanical Engineer Shell to the Appeal preferred by V. Damodaran (xerox copy)

THIRU K. NATARAJAN, Presiding Officer

[No. L-41011/1/86-D. II(B)]

नई दिल्ली, 15 फरवरी, 1989

का.प्र. 398.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इन्टीग्रल कोच फैक्ट्री मद्रास के प्रबन्धन में सम्बन्धित नियोजकों और उनके कर्मचारों के बीच, सम्बन्ध में निम्नलिखित औद्योगिक विवाद में औद्योगिक अधिकरण, मद्रास के पंचपट को प्रकाशित करता है, जो केन्द्रीय सरकार को 30-1-89 को प्राप्त हुआ था।

New Delhi, the 15th February, 1989

S.O. 398.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Madras as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Integral Coach Factory, Madras and their workmen, which was received by the Central Government on the 30-1-89.

BEFORE THE INDUSTRIAL TRIBUNAL, TAMILNADU, MADRAS

Thursday, the 3rd day of November, 1988

Industrial Dispute No. 61 of 1986

In the matter of the dispute for adjudication under Section 10(1)(d) of the Industrial Disputes Act, 1947 between the workmen and the management of Integral Coach Factory, Madras.

BETWEEN

Thiru M. Natarajan, C/o T. P. Thiruppal.
No. 5/23, Vasantha Garden Street, Madras-23.

AND

The General Manager,
Integral Coach Factory, Madras-38.

REFERENCE :

Order No. L. 41012/47/85-D./II(B), dated 23-8-1986 of the Ministry of Labour, Government of India, New Delhi.

This dispute after restoration, coming on for final hearing on Monday, the 29th day of August, 1988 upon perusing the reference, claim and counter statements and all other material papers on record and upon hearing the arguments of Thiru T. P. Elisha Thiruppal, Authorised Representative for the workman and of Thiru A. J. D. Rozario, Authorised Representative for the management and this dispute having stood over till this day for consideration, this Tribunal made the following:

AWARD

This dispute between the workman and the management of Integral Coach Factory, Madras arises out of a reference under Section 10(1)(d) of the Industrial Disputes Act, 1947, by the Government of India in its order No. 1, 41012/47/85-D-II(B) dated 29-8-86 of the Ministry of Labour for adjudication of the following issue :

"Whether the action of the management of Integral Coach Factory, Madras in removing Shri M. Natarajan, HSA/Gr. I Welder from services with effect from 16-6-83 is legal and justified? If not to what relief and from what date the workman is entitled to?"

2. The petitioner in his claim statement states that the appointed as a Khalasi on 2-6-1977 in the Integral Coach Factory, Madras and subsequently he was promoted as HSA/Grade I Welder on 4-4-1979. Whilesso, a charge sheet was issued to him on 6-10-1980 alleging that he produced a false school certificate and community certificate at the time of appointment. In the domestic enquiry, the enquiry officer accepting the documents of the District Educational Officer and Tahsildar, Madras without affording an opportunity to the petitioner to cross-examine the authors of the above letters (documents) and proceeded with the enquiry. The community certificate was not produced before the enquiry officer and he was removed from service with effect from 16-6-1983 without following the Railway Servants (Discipline and Appeal) Rules, 1968. His appeal also met with the same fate. The enquiry proceedings are vitiated as per Rule 11 of the Railway Servants (Discipline and Appeal) Rules, 1968. Hence the termination of the service of the Petitioner is illegal and beyond the principles of natural justice. Hence it is prayed that this Tribunal may be pleased to set aside the termination order and reinstate him in service with back wages and attendant benefits.

3. The Respondent-Management in its counter statement states that the petitioner-workman procured employment in June, 1977 by producing a false community certificate that he belonged to Hindu Kattunaicken Community which is Scheduled Tribe. A charge sheet was issued to him and after receiving his explanation and holding an enquiry he was terminated from service. In respect of the original documents, namely the community certificate and record sheet the Petitioner was advised to inspect the same for the purpose of enquiry. But the petitioner did not inspect the same. The Disciplinary Authority to whom the findings of the Enquiry Officer were forwarded after going through the findings accepted the same and removed the petitioner from service with effect from 16-6-1983. The Appellate Authority, namely, the Additional Chief Mechanical Engineer (Shell), Integral Coach Factory also dismissed the appeal. The Certificate of record sheet was produced by the petitioner from a non-existing school and it was found that there was no such school in Royapuram which was found by way of reply receiving from District Education Officer. Similarly, the petitioner produced a bogus community certificate on the reserved quota for Scheduled Tribes. The petitioner was given all opportunities to explain these certificates. The authorities were contacted to find out the truth and genuineness of these certificates and the authority given a letter stating that these documents are not genuine. Hence there is no need to examine those letters. The petitioner should have taken steps to summon those authorities in support of his case. The non-examination of the authors of these letters will not in any way vitiate the enquiry. The allegation that the Community Certificate which is a very important document has not been produced by Enquiry Officer at the time of enquiry is false. The allegation that he was removed from service without following the Railway Servants Discipline and Appeal Rules, 1968 is baseless. There are no merits in the claims statement and the non-employment of the petitioner is justified.

4. The points for consideration are :

1 Whether the action of the management of Integral Coach Factory, Madras in removing Shri M. Natarajan, HSA/Gr. I Welder from service with effect from 16-6-83 is legal and justified?

2. If not, to what relief and from what date of the workman is entitled to?

5. On the side of the petitioner-workman, Ex. W1 to W28 were marked and on behalf of the Respondent Management, Ex. M1 to M14 were Marked. Ex. W.7 to W.21 are the representations and correspondence between the petitioner and the management. Therefore there is not much in those documents to be discussed in detail.

6. It is seen from Ex. M5 the charge memo which is corresponding to Ex. W1, the petitioner was charge sheeted for two charges, namely producing false record sheet and false community certificate obtained an appointment. In this connection, an enquiry was conducted under Ex. M11 proceedings to Ex. W28 and the management mainly relied on the statement given by the petitioner under Ex. M3 before the Chief Vigilance Inspector in addition to Ex. M2 and Ex. W6. It is seen from Ex. M2, the letter dated 3-8-1979 addressed by the management to the District Educational Officer (North), Madras to verify whether there is a School in the name of Govindappa Mudaliar Higher Elementary School in Royapuram Range and if it is recognised under the Education Rules, Tamilnadu together with its address, to which a reply was sent on 22-9-1979 that there is no such school in the name of Govindappa Mudaliar Higher Elementary School in Royapuram Range. This reply was received on to show that the record sheet produced by the Petitioner at the time of appointment stating that he was studying in Govindappa Mudaliar Higher Elementary School, Royapuram is totally false. It cannot be disputed at this stage that at the time of appointment, a certificate Ex. M1 produced should have been scrutinised before issuing the orders of appointment. Further, the reply sent by the District Educational Officer under Ex. M2 is only to the effect that there is no such school in the name of Govindappa Mudaliar Elementary School in Royapuram Range. Ex. M1 record sheet shows that the petitioner had studied from 1957 to 1963. The reply under Ex. M2 was only to the effect that there is no such school at the relevant time namely 22-9-1979 when the letter was sent by the District Educational Officer, Madras to the Management. It has not been stated in that letter that at the relevant time namely from 1957 to 1963 whether there was any school by name Govindappa Mudaliar Higher Elementary School in Royapuram Range. The reply sent under Ex. M2 was only to a limited clarification asked by the management. Therefore it cannot be ruled out the school alleged could have existed at the time the certificate was issued by the School to the petitioner. The management has not established during the course of the enquiry that there was no school as such on the relevant date when the petitioner alleged to have been studied in it from 1957 to 1963. Of course in his statement recorded by the Chief Vigilance Inspector under Ex. M3 corresponding to Ex. W5 has stated that he did not study in that school and the record sheets obtained by his father were produced by him. Much was sought to be made on this admission by the management. At this stage it is relevant to note that the case of the petitioner is the statement Ex. M3 was obtained under threat. The Respondent-Management who seeks to proceed against the petitioner ought to have given clinching evidence on this fact instead of relying on the tainted statement Ex. M3.

7. Coming to the false production of community certificate, the respondent management relies on Ex. W6 the letter of Tahsildar Purasawalkam-Pernambur Taluk, Madras-7 stating that there is no such a disposal available in this office record regarding issue of community certificate to Natarajan and that on personal inspection made by him and enquiries in Ayyanavaram there is no such street and therefore no such community certificates might have been issued by a Tahsildar from this Taluk and the certificate in question will not hold good. The reply under Ex. W6 shows that there was no disposal file available in which the said community certificates was issued to Natarajan. While it is so, it is curious how the Tahsildar can say that no such community certificate might have been issued from his office. Further, he also does not categorically say that no such community certificate was issued from his office. A close scrutiny of Ex. W6 would only disclose that a certificate might not have been issued by a Tahsildar. But it cannot be said that the certificate produced by the petitioner is not a correct one. In this connection the attack made by the petitioner that during the enquiry neither the Tahsildar nor the Officer from the Education Department was examined.

The objection of the petitioner to produce the original community certificates record sheet as well as the examination of the authors of those documents has been over-ruled by stating it is not necessary. It has been completely forgotten by the domestic enquiry officer that the valuable right of the petitioner to cross-examine the authors of those documents has been taken away. The authors of those documents should come and speak to those letters, otherwise, those documents cannot be said to be proved as per rules of Evidence.

8. In this connection, the authorised representative drew my attention to the transferred application No. 620/1986 disposed of by the Central Administrative Tribunal, Madras Bench on 27-4-1987. In that case, the Applicant entered service in the Railways on 11-5-1977 as a Khalasi on the basis of a Community Certificate issued by Tahsildar. Saidanet that he belongs to the Karumans community which is classified as Scheduled Tribe. Subsequently that certificate was cancelled by Tahsildar. Based on such cancellation, the management framed charges against the Applicant therein and finally after conducting an enquiry removed him from service. In that case, before the Central Administrative Tribunal, the question arose whether the Enquiry Officer has erred in relying on the letters issued by Tahsildar and Headmaster of the School without actually examining them as witnesses with reference to charges and whether the findings of the enquiry officer are perverse. The Tribunal after discussion gave a finding that the Tahsildar who issued a certificate cannot cancel the same without giving notice to the Applicant and without hearing him and any cancellation behind his back is clearly violative of the principles of natural justice. When such a cancellation is relied upon by the department, naturally they should have examined the Tahsildar to enable the Applicant to cross-examine him with reference to the question as to which community the Applicant belongs. Therefore, the non-examination of Tahsildar vitiated the proceedings. Further as per rules of evidence a letter written by the witness cannot straight away be accepted as evidence unless the author of the letter is examined. So holding the Tribunal set aside the order removing the Applicant from service. This decision is directly applicable to this case. That apart, the enquiry proceedings reveal that the enquiry officer himself has chosen to play the role of prosecutor and judge by himself questioning the Management witnesses. Thus it is seen the enquiry held by the domestic enquiry officer is not proper and not based on any evidence on record. Hence the action of the management in removing the petitioner Thiru M. N. Nataraja from services with effect from 16-6-1983 is not legal and justified.

9. Coming to the question of relief, an award is passed directing the management reinstating the petitioner in service within one month from the date of publication of the award. He is not entitled to any other relief. There will be no order as to costs.

Dated this 3rd day of November, 1988.

Sd- K. NATARAJAN, Industrial Tribunal

List of witnesses and Exhibits in I.D. No. 61/86

Witnesses Examined

For Both Sides : None.

Documents Marked

For Workmen :

- Ex. W1—610-80 Chargesheet issued to workman—copy.
- Ex. W2—Application form for appointment—copy.
- Ex. W3—24-6-83 Record sheet—copy.
- Ex. W4—3-8-79 Letter from the mgt. regarding verification of school certificate of workman—copy.
- Ex. W5—19-11-79 Statement of workman—copy.
- Ex. W6—28-7-80 Lr. from Tahsildar, Purasawalkam-Perambur Taluk, Ms. to the management regarding community certificate—copy.
- Ex. W7—20-8-81 Lr. from the workman to management regarding Addl. Bonus (copy).

- Ex. W8—25-9-81 Notice by management regarding inspection of documents (copy).
- Ex. W9—4-2-86—Community certificate—copy
- Ex. W10—3-10-81 Lr. from the workman to management—copy.
- Ex. W11—13-11-81—Notice by management regarding inspection of documents—copy.
- Ex. W12—26-11-81 Lr. from workman to management regarding inspection of addl. documents (copy).
- Ex. W13—14-12-81 Notice by management to workman—copy.
- Ex. W14—4-1-82 Lr. from workman to W13—copy.
- Ex. W15—19/26-2-82 Notice by management to workman—copy.
- Ex. W16—17-3-82 Reply by workman to W15 (copy).
- Ex. W17—6-4-82 Notice by management to workman copy.
- Ex. W18—5-5-82 Reply by workman to W17 (Copy).
- Ex. W19—17-6-82 Notice by management to workman regarding inspection of additional documents,—(copy).
- Ex. W20—17-6-82 Enquiry notice (copy).
- Ex. W21—6-4-82—Notice by management to workman (copy).
- Ex. W22—14-5-83 Defence statement of workman—copy.
- Ex. W24—13-6-83 Notice by management to workman regarding disciplinary action—copy.
- Ex. W24—24-5-83 Findings of the enquiry officer—copy.
- Ex. W25—18-7-83 Reply of Opposite party to management—copy.
- Ex. W26—28-9-83 Notice by management to workman—copy.
- Ex. W27—25-10-83 Reply to workman to W26 (copy).
- Ex. W28—Enquiry proceedings—copy.

For Management :

- Ex. M1—30-4-63 Record sheet in favour of the workmen Thiru M. Natarajan—copy.
- Ex. M2—3-8-79/22-9-79 Lr. by management to E.O. (N) Ms. 7 regarding verification of School certificate—(copy).
- Ex. M3—19-11-79 Statement of workman—copy.
- Ex. M4—Application by the workman for recruitment of Class IV posts—copy.
- Ex. M5—6-10-80 Charge memo issued to the workman (xerox copy).
- Ex. M6—20-8-81 Xerox copy of Ex. W7.
- Ex. M7—26-11-81 Xerox copy of Ex. W12.
- Ex. M8—4-1-82 Xerox copy of W14.
- Ex. M9—17-6-82 Xerox copy of W20.
- Ex. 10—29-7-82 List of charges proved against workman (copy).
- Ex. M11—29-7-82 to 15-4-83 Proceedings of Enquiry Officer (copy).
- Ex. M12—24-5-83 Findings of the Enquiry Officer (copy).
- Ex. M13—13-6-83 Penalty order imposing removal from service—copy.
- Ex. M14—28-9-83 Notice from Management to workman (copy).

K NATARAJAN, Presiding Officer

[No. L-41012/47/85.D.II(B)]

HARI SINGH, Desk Officer

नई दिल्ली, 13 फरवरी, 1989

का.मा. 399—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार व सैनर्स ई.सी. लिम. की सोदेपुर 9 एवं 10 पिट्स कोलियरी के प्रबन्धतंत्र के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कलकत्ता के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 3-2-89 को प्राप्त हुआ था।

New Delhi, the 13th February, 1989

S.O. 399.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Calcutta as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Sodepur Pits Colliery of M/s. Eastern Coalfields Ltd., and their workmen, which was received by the Central Government on 3-2-1989.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
AT CALCUTTA

Reference No. 87 of 1988

PARTIES :

Employers in relation to the management of Sodepur⁹
& 10 Pits Colliery of M/s. Eastern Coalfields Ltd.

AND

Their Workmen.

APPEARANCES :

On behalf of employers : Mr. B. N. Lala, Advocate.

On behalf of Workmen : None.

STATE : West Bengal.

INDUSTRY : Coal.

AWARD

By Order No. L-19012/135/86-D IV (B), dated 3rd June, 1987, the Government of India, Ministry of Labour, referred the following dispute to this Tribunal for adjudication :

"Whether the action of the Management of Sodepur⁹ & 10 Pits Colliery of M/s. E.C. Ltd., P.O. Sunderchak, Distt. Burdwan, in not accepting the age of Shri Bhade Mia Underground Loader as mentioned in the Identity Card issued by the erstwhile employer of 7 & 8 Pits Banksimulia Colliery and termination his services w.e.f. 1-7-1986 on the ground of his attaining the age of superannuation is justified ? If not, to what relief the workman concerned is entitled ?"

2. When the case is called out today, Mr. B. N. Lala, Advocate appears for the management but nobody appears for the workman. It appears from the record that the Union or the workman concerned did not appear on 3-8-1988 and 2-11-1988 inspite of the service of the notice. It further appears that the Union or the workman did not file their written statement. In the circumstances, it appears that the Union or the workman is not interested in proceeding with the reference. Such being the position, I have no other alternative but to pass the "No Dispute Award". Accordingly I do so.

This is my Award.

Dated : Calcutta, the 25th January, 1989.

SUKUMAR CHAKRAVARTY, Presiding Officer.

[No. L-19012/135/86-D. IV. (B)]

नई दिल्ली, 15 फरवरी, 1989

का.मा. 400—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार व सोदेपुर कोलियरी सैनर्स ईस्टर्न कोलफील्ड्स लिम. के प्रबन्धतंत्र के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कलकत्ता के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 3-2-89 को प्राप्त हुआ था।

New Delhi, the 15th February, 1989

S.O. 400.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Calcutta as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Sodepur Colliery of M/s. Eastern Coalfields Ltd., and their workmen, which was received by the Central Government on 3-2-1989.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
AT CALCUTTA

Reference No. 84 of 1988

PARTIES :

Employers in relation to the management of Sodepur
Colliery of M/s. Eastern Coalfields Limited.

AND

Their Workmen

APPEARANCES :

On behalf of employers : Mr. B. N. Lala, Advocate.

On behalf of Workmen : None.

STATE : West Bengal.

INDUSTRY : Coal

AWARD

By Order No. L-19012/132/86-D. IV. (B), dated 3-6-1987, the Government of India, Ministry of Labour, referred the following dispute to this Tribunal for adjudication :

"Whether the action of the Management of Sodepur Colliery of M/s. E.C. Ltd., in terminating the services of Shri Sitaram Kahar, Timber Mistry, w.e.f. 1-7-1985 on the ground of his attaining the age of superannuation ignoring the records of the Patmo-hna Colliery from where the workman concerned was transferred to Sodepur Colliery, is justified ? If not, to what relief the concerned workman is entitled ?"

2. When the case is called out today, Mr. B. N. Lala, Advocate appears for the management. Nobody appears for the workman even today, although more than one month has elapsed since the issue of the notice on 12-12-1988 intimating the date as on today. It appears from the record that on previous occasions also inspite of service of the notice, the workman or the Union did not appear on 6-5-1988, 3-8-1988 and 2-11-1988. In the circumstances it appears that the Union or the workman is not interested in proceeding with the reference. Such being the position, I have no other alternative but to pass the "No Dispute Award". Accordingly I do so.

This is my Award.

Dated : Calcutta, the 25th January, 1989.

SUKUMAR CHAKRAVARTY, Presiding Officer.

[No. L-19012/132/86-D. IV. (B)]

R. K. GUPTA, Desk Officer

मई दिल्ली, 13 फरवरी, 1989

का.अ. 401.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसूच में, केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबन्धन के संबंध निषेधकों और उनके कर्मचारियों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिभरण, संख्या 2, इन्डस्ट्री के पंचवट को प्रवर्धित करती है, जो केन्द्रीय सरकार को 31 जनवरी, 1989 को प्राप्त हुआ था।

New Delhi, the 13th February, 1989

S.O. 401.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal No. 2, Bombay, as shown in the Annexure in the industrial dispute between the employers in relation to the management of State Bank of India and their workmen, which was received by the Central Government on the 31st January, 1989.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, BOMBAY

Reference No. CGIT-2/63 of 1987

PARTIES:

Employer in relation to the management of State Bank of India.

AND

Their workman.

APPEARANCES:

For the Employer: Shri R. K. Joshi, Law Officer.

2. Shri C. M. Parkhi, Personnel Officer.

For the Workman: 1. Shri Pandit H. Gopalrao, Representative.

2. Shri Abdul Hamid G. Gazekhan, (Workman in person)
INDUSTRY: Banking. STATE: Maharashtra.

Bombay, dated the 13th January, 1989

AWARD

The Central Government by their Order No. L-12012/325/86-D.II(A), dated 1-12-1987 have referred the following industrial dispute to this Tribunal for adjudication under Section 10(1)(d) of the Industrial Disputes Act, 1947:—

"Whether the action of the management of State Bank of India, Pune, in dismissing Shri A. H. G. Gazekhan, Head Clerk, from Bank's service is justified? If not, to what relief is the workman entitled?"

2. The case of the workman Shri A. H. G. Gazekhan as disclosed from the statement of claim (Ex. 2/W), in short, is thus:—

- (i) The workman Shri Gazekhan was in the service of the State Bank of India since 1966, and was working as Head Clerk at the Dehu Road Branch till the date of his dismissal from service with effect from 5-12-1983. As such he was in the service of the Bank for 17-1/2 years, and he had a very clean and unblemished record. On 6-7-1982 he was served with a show cause notice by the Branch Manager Dehu Road Branch and was called upon to submit his explanation. Surreptitiously this show cause notice was called as charge-sheet against him and the so-called enquiry was held against him. The enquiry was held only on two days on 14th and 15th October, 1982. The Disciplinary Authority, i.e., the Regional Manager awarded the punishment

of dismissal from service upon him, one year after the receipt of the findings of the Enquiry Officer.

- (ii) In fact the workman had not committed any misconduct. The so-called charge-sheet was abinitio bad in law, and it was only a show cause notice without specifying the charges against him. The so-called enquiry was bad in law, and was conducted against the principles of Natural Justice. The so-called charge-sheet dated 6-7-1982 referred to some transactions of the years 1980-81. The show cause notice, while calling for explanation of the workman, stated that notwithstanding any explanation of the workman, the enquiry would be conducted. Therefore, the decision to hold the enquiry was pre-judged in the show cause notice itself. The decision to conduct the enquiry on specific charge was not communicated to the workman by the management as per the provisions of the Award and the Bipartite Settlements. The Enquiry Officer Shri Lonkar was the Branch Manager of some other branch of the Bank and was prejudiced against the workman. He only did a farce of the so-called enquiry against him. The enquiry officer did not tell him as to what misconduct he had committed, when the enquiries were started against him. He was also not given adequate time or opportunity to defend himself. The workman was not explained the procedure of the enquiry by the said Enquiry Officer. The enquiry officer and the presenting officer recorded certain statements in English by mutual discussions. The enquiry officer put in certain statements into the mouth of the workman, and recorded them. The findings recorded by the Enquiry Officer were not based on any evidence, but they were his own surmises and assumptions. The disciplinary authority also did not apply its mind before awarding him the punishment of dismissal. Further the punishment of dismissal is disproportionate to the so-called allegations levelled against him. The workman is without any service since the date of dismissal. He has no means of livelihood and a very large family consisting of 12 members is dependent upon him. The workman therefore prayed that the order of dismissal be set aside after allowing the reference and the Bank be directed to reinstate him in service with full back wages and continuity of service.

3. The Regional Manager of State Bank of India by his written statement (Ex. 3/M) denied all the allegations made by the workman in his statement of claim, and in substance contended thus:—

- (i) The claim put forth by the workman is based on misrepresentation of facts, and it does not reveal the correct and true picture of the case. It is further contended that the statement of claim was not filed by the workman within two weeks from the receipt of the reference order. Further, the workman did not produce the basic back ground of the case along with the statement of claim. As such the provisions of Rule 10-B(1) and (2) of the Industrial Disputes (Central) Rules, 1957 have not been complied with, and hence his case deserves to be dismissed on this count only.

- (ii) As regards the merits of the case, it is contended thus:—

At the material period the said workman Shri Gazekhan was working as a Head Clerk at Dehu Road Branch of the Bank. He then committed certain frauds. During the ordinary course of banking business the branch has to send the articles/bills, returned by value payable parcels to various financial institutions other than our Bank/branches throughout the country. When the Bank sends any V.P.P. the charge thereof are paid by the other responding institution by money order. On receipt of the money order, the amount is credited to the commission account. This is the normal procedure followed at the branches. The said workman while he was serving as a Head Clerk at Dehu

Road Branch from 3-7-1980 to 15-12-1983 received the money orders of value payable parcels on behalf of the Bank and he did not credit the amount thereof to the Branch Commission account. In particular on 28-3-1981, the amount of money order bearing No. 148 for Rs. 5 was received from the State Bank of Mysore, Pune by the workman, but he did not credit it to the Branch Commission account. He was doing like this habitually and regularly, and thereby he was wrongtully and dishonestly mis-appropriating the Bank's money for his personal gain and was causing loss to the Bank. To have effective control over the cash transactions, the Bank had delegated certain passing powers to various officials and staff in its hierarchy. At the material time the Head Clerk was empowered to pass the cheque only to the extent of Rs. 1,000. However, the said workman was in the habit of passing cheques beyond his powers i.e. cheques exceeding the amount of Rs. 1,000. On 4-5-1981, he passed a cheque for Rs. 2,800 relating to account of S. B. Account No. 4669. The said cheque was missing from the record, and the ledger sheet has been removed from the ledger binder. Some alterations were made by him in the record. The said conduct on the part of the said workman amounted to misconduct.

(iii) Hence, the Bank on 22-4-1982 issued a Memo., and called for his explanation. He submitted his explanation, which was found unsatisfactory. Hence the Bank issued a chargesheet on 6-7-1982. Thereafter the workman again filed his explanation in writing. The necessary enquiry was held against the workman. The enquiry officer conducted the enquiry on 14th and 15th October, 1982. The workman was given all opportunities to defend his case. He participated in the proceedings and defended his case personally. The enquiry was held against him properly and legally. The enquiry officer submitted his report to the disciplinary authority, after recording the necessary findings on the basis of the evidence before him. The disciplinary authority again issued show cause notice regarding the proposed punishment of dismissal. The workman submitted his explanation admitting the misconduct and prayed for mercy. The disciplinary authority, after applying its mind, passed the order of dismissal against the workman. The workman filed his written representation against the order, to the Chief Regional Manager, as Appellate authority. That authority rejected his representation and confirmed the order of dismissal passed against the workman. In fact the workman admitted the charges leveled against him, and he had no specific defence and he did not deny the charges specifically. The above said acts of misconduct on the part of the workman put the Bank to a loss of Rs. 2,800, which the bank was required to pay to the account holder by debiting to Protested Bills Account. It is not expected from the Bank to continue in service an employee in whom it has lost its faith. The Bank therefore prayed for the dismissal of the workman's claim.

4. On these pleadings, the issues framed at Ex. 4 are thus :—

- (1) Whether the inquiry held against the workman Shri A. H. G. Gajekhan by the Inquiry Officer was not held properly, and the rules of natural justice were not followed ?
- (2) Whether the show cause notice/charge-sheet issued against him was bad in law, and had not contained the specific particulars of the charge against him ?
- (3) Whether the claim of the worker deserves to be dismissed summarily, as he did not file his statement of claim within two weeks from the date of the reference notice, and further, as he did not produce the basic documents of the case along with the statement of claim ?

(4) Whether the action of the management of State Bank of India, Pune, in dismissing Shri A. H. G. Gajekhan, Head Clerk, from Bank's service is justified ?

(5) If not, to what relief is the workman entitled ?

(6) What Award ?

5. My findings on the said Issues are :—

- (1) The enquiry against the workman was held properly, and the rules of natural justice were followed.
- (2) No. It contained specific allegations.
- (3) No.
- (4) No.
- (5) As per award.
- (6) As per order.

REASONS

Issue Nos. 1 and 2

6. No oral evidence was led on behalf of either of the parties. Both have relied only upon the enquiry proceedings held against the Workman Shri Gajekhan. It is alleged on behalf of the said workman that the enquiry against the workman was not held properly and the rules of natural justice were not followed, that he was not given proper opportunity to defend himself, and that the show cause notice/chargesheet issued against him was bad in law, and did not contain the specific particulars of the charge alleged against him. I find that there is absolutely no substance in any of these allegations made on behalf of the workman, as can be seen from the following discussion :—

The very first charge of the chargesheet dated 6-7-1982 (Ex. 5/M) states that "you are hereby required to show cause why disciplinary action should not be taken against you for the following charge (s)"—It is true that even though this document is styled as Chargesheet, in fact it is a show cause notice, as it states that "why disciplinary action should not be taken against the workman". This show cause notice (chargesheet) then enumerates the particulars of charges leveled against him. It is clearly stated as regards the charge of Rs. 5 thus :

"It is observed that 28th March 1981, you have discharged the value payable Money Order bearing No. 148 for Rs. 5 (Rupees five only) received from State Bank of Mysore, Poona, and the proceeds have not been credited to Branch Commission Account. Shri N. D. Moghe, Officer, who was deputed to Post Office for verification, has testified to this effect."

It is further stated thus :—

"On 4th May, 1981 you have passed for cash payment a cheque for Rs. 2,800 beyond your passing powers as Head Clerk on account of S.B. A/C No. 4669 without following the laid down procedure."

It is also stated that finally a loss to the extent of Rs. 2,800 was thereby caused to the Bank regarding the cheque. The said Memo. further stated that "you also were in the habit of passing cheque/instruments for payment beyond the powers vested in you as Head Clerk which is tantamount to gross negligence. Following instances are cited in support of this charge". As many as 27 instances have been mentioned in that Memo. showing different dates from 28-2-1981 to 12th June, 1981 during which the said workman had passed the cheques in respect of the amounts exceeding Rs. 1000. The fourth para. of this show cause notice (Ex. 5/M) states thus :—

"You are, therefore, hereby called upon to submit your explanation in writing within 7 days from the date of receipt of this Memorandum by you. Thereafter, an enquiry will be held by Shri M. A. Lonkar, Branch Manager, Chinchwad at this office on the date (which will be communicated to you separately) to enable you to submit your explanation in person and also to adduce any evidence that you may

wish to tender in your defence. You may arrange for the witnesses whom you desire to be examined to be in attendance."

It is thus clear that the said show cause notice styled as chargesheet in fact did contain particulars of the proposed charges against him, and that he was told by that show cause notice that he was being given the proper opportunity to defend himself regarding the said allegations.

7. In fact the said workman filed his say dated 12-8-1982 (Ex. 6/M) to the said show cause notice. In that say, he clearly admitted that "due to heavy rush I bonafide passed the cheque without having reference to relative ledger account. The missing of cheque for Rs. 2,800 is the mischief of somebody from the staff. He further stated in that reply that 'I have no any motive to put the bank to financial loss for wrongful debit to account No. 4669 of Mr. Shobha Divakaran'. He also admitted at the end of his say that 'no doubt I have passed the cheques beyond my power, that is because I have done it due to rendering of service to the public and that 'on bona fide. I have not followed the correct procedure and thus I have come in trouble. I state that whenever the payments of cheques about Rs. 1,000 have been made, the officer concerned used to go for the lunch and I bona fide passed the cheques'. Such was the reply given by the workman to the said show cause notice issued to him.

8. Thereafter the actual enquiry proceedings were held on 14th and 15th October 1982 (Ex. 7/M). It will be seen from these proceedings that on the said workman was present throughout the proceedings. It is seen from the enquiry proceedings that the Enquiry Officer drew the attention of the said workman to the different allegations of the charges made against him in the said show cause notice, though no separate and fresh chargesheet was issued against the workman. At the time the enquiry proceedings started against him, the particulars of allegations levelled against him as per the show cause notice, were again read out to him. It is further seen from the enquiry proceedings that the Enquiry Officer had asked the workman Shri Gazekhan (chargesheeted employee) whether he would like to be defended by any representative employee of the Bank, and he replied that he would not like to be defended by any employee of the Bank. The enquiry proceedings further state that the Enquiry officer read out all the charges levelled against him and asked him whether or not he admitted the charges, and he (the chargesheeted employee) replied that the charges are not acceptable to him. Thereafter the Enquiry Officer asked the presenting officer to open his case. Accordingly he opened his case and narrated the facts. The Enquiry Officer again asked the workman whether he wanted to give his explanation in the matter and the workman gave certain replies before the Enquiry Officer. Thus, every opportunity was being given to the said workman to defend himself. The proceedings were then adjourned to the day. On the next day the Enquiry Officer drew the attention of the workman to the fact that he had passed cheques over Rs. 1000 even during the early hours of the day, and not necessarily when the concerned officer had gone for lunch at the closing hours of the day, and asked him to put forth his say in the matter. The workman replied that he had made the payment for giving customer service and under innocence. Thereafter the Enquiry Officer asked certain questions to him and he replied to them. Certain witnesses were then examined by the presenting officer and the workman was asked whether he wanted to cross-examine the witnesses. He replied that he did not want to cross-examine the witnesses. The Enquiry Officer there asked the workman whether he wanted to examine any witnesses on his behalf or produce any record. He replied that he did not propose to examine any other employee/or produce document in support of his deposition and he did not want to examine himself as a witness. Thus, it is very clear that every opportunity was being given to the workman while the enquiry was in progress to defend himself, and that the rules of Natural Justice were properly followed and the enquiry proceedings were held properly and regularly. At the end of the enquiry the Enquiry Officer asked him whether he wanted to make any other comments and/or submissions and he replied that the above irregularities have

been perpetrated due to his innocence and negligence, that although he may be responsible for the damages which the Bank will have to sustain on account of this, his case may be considered sympathetically and he may be pardoned.

9. Thereafter the Enquiry Officer submitted his report to the management holding the workman guilty of all the charges levelled against him. He concluded that the amount of Rs. 2,800 was misappropriated by the workman himself, and he proposed the penalty of dismissal from service against the workman.

10. Thereafter the Regional Manager of the Bank sent a copy of the enquiry proceedings along with the findings of the Enquiry Officer to the said workman and again issued a further show cause notice dated 4-10-1983 (Ex. 16/M) to him. By that show cause notice the Regional Manager stated that he had tentatively decided to dismiss him from service, and asked him to submit his say, if any, within seven days. The workman Shri Gazekhan submitted his say (Ex. 17/M) by his letter dated 16-10-1983. In that letter he stated that there was no documentary prima facie evidence against him to hold him guilty of the charges levelled against him, and that he had performed the duties in good faith, without negligence, and with a view to offer better customer service. He further stated that the proposed punishment was too serious and lastly he prayed for sympathetic view and requested that he may be pardoned for his lapses. Thereafter, by order dated 5-12-1983 (Ex. 9/M) the Regional Manager (II) issued the order of dismissal against the workman Shri Gazekhan. Against the order of dismissal Shri Gazekhan filed an appeal (representation) dated 5-3-1984 (Ex. 10/M) to the Chief Regional Manager and prayed for mercy. That appeal dated 5-3-1984 was rejected by the Chief Regional Manager by the order dated 21-3-1984 (Ex. 18/M) stating that there were no grounds for taking a lenient view in the light of the grave misconduct committed by him. I find that the workman Shri Gazekhan came to be dismissed from service of the said Bank, after the necessary domestic enquiry was held against him after following all the rules of natural justice and after he was given proper opportunities to defend himself. The finding on Issue No. 1, therefore, is that the enquiry against the workman was held properly and the rules of Natural Justice were followed properly. As noted above, the said first show cause notice (chargesheet) contained all the specific allegations against him and it was not vague. Issue No. 2 is, therefore, found in the negative.

Issue No. 3

11. It is contended on behalf of the management that the claim of the workman deserves to be dismissed summarily, as he did not file his statement of claim within two weeks from the date of the reference notice, and further, as he did not produce the basic documents of the case along with the statement of claim. The reference was received by this Tribunal on 15-12-1987. On the same day this Tribunal issued notices to both the parties to file their respective statements regarding the reference, in question. The Tribunal received a telegram on 21-12-1987 requesting for 15 days more time to file the statement of claim. The first date of hearing was fixed by the Tribunal on 25-1-1988. The workman has filed the statement of claim on the same day i.e. 25-1-1988. Under Rules 10-B(1) of the Industrial Disputes (Central) Rules, 1957, while referring an industrial dispute for adjudication to a Tribunal, the Central Government shall direct the party raising the dispute to file a statement of claim complete with relevant documents with the Tribunal within fifteen days of the receipt of the order of reference, and also forward a copy of such statement to the Opposite Party. Thus, the statement of claim was to be filed within 15 days of the receipt of the order of reference. Under clause (2) of this Rule, the first date of hearing is to be fixed by the Tribunal on a date not beyond one month from the date of receipt of the order of reference. As noted above, the first hearing date was fixed on 25-1-1988. Under clause (3) of the said Rule, where the Tribunal finds that the party raising the dispute has not furnished the copy of the statement of claim to the Opposite Party within the prescribed time limit, it may extend the time limit by an additional period of 15 days. As noted above, the first date

of hearing was 25-1-1988. The workman has filed his statement of claim on 25-1-1988. I further find that the Industrial Tribunal has inherent powers to extend the time to enable the party concerned to file its statement of claim. Further, the documents to be produced by the workman were in the possession of the Opposite Party, i.e. the management, and as such, they could not have been produced by the workman along with the statement of claim. In due course, the workman filed an application requesting that the management be directed to produce the copies of relevant documents, and accordingly, the documents have been produced in the proceedings. I, therefore, find that the claim cannot be dismissed on the grounds contended on behalf of the management. Issue No. 3 is found in the negative.

Issue No. 4

12. It is urged on behalf of the workman that the show cause notice and the chargesheet should have been issued by the Regional Manager of the Pune Region, Pune, and not by the Branch Manager of the Dehu Road Branch, as per the provisions of Para 520 and 521 of the Sastri Award. It will be seen from Ex. 5[M], the Chargesheet (show cause notice) dated 6-7-1982, that it has been issued to the said workman by the Branch Manager. However, it states that under instructions from the Regional Manager, Region-II, Pune, the workman was required to show cause why disciplinary action should not be taken against him. Thus, the Branch Manager has acted under the instructions from the Regional Manager. The order of dismissal has been passed after the receipt of the report of the Enquiry Officer, by the Regional Manager himself. The appeal filed against the order of dismissal has been rejected by the Chief Regional Manager. Thus, in my opinion the chargesheet (show cause notice) issued by the Branch Manager under the instructions from the Regional Manager does not render the whole enquiry proceedings illegal, null, and void, as it has been held properly, and the principles of natural justice have been duly followed. I have gone through the enquiry report (Ex. 8/M) of the Enquiry Officer, and also the enquiry proceedings, and I agree with the findings recorded by the Enquiry Officer. The first charge against the workman was regarding discharge of the value payable Money Order for Rs. 5, and that the workman had not paid amount to the Branch Commission Account. The Enquiry Officer came to the conclusion that the said workman was not only negligent but was also responsible for misappropriation of cash. He held the workman guilty of charge No. 1. Charge No. 2 against him was that he passed a cheque for Rs. 2800 on 4-5-1981 beyond his passing powers as Head Clerk without following the laid down procedure by the Bank. The said cheque was later on found missing from the record, and the Ledger sheet was also missing. It was alleged that the Bank was confronted with the possibility of sustaining financial loss to the extent of Rs. 2,800. The Enquiry Officer concluded that he was convinced beyond doubt that the workman alone and nobody else, was responsible for the loss and misappropriation of cheque for Rs. 2,800. The Enquiry Officer lastly remarked that he was

led to conclude that the chargesheeted employee cannot be exonerated from both the charges as mentioned earlier. As stated above, I agree with the findings of the Enquiry Officer as they are proper and not preverse.

13. Even then, the action taken by the management in passing the order of dismissal against the said workman is too disproportionate with the charges levelled against him. While inflicting any punishment on a workman, his past record and other mitigating circumstances, if any, are to be taken into consideration. It is seen that these factors have not been taken into consideration in the present case while awarding the punishment of dismissal. It is an admitted fact that the said workman had put in more than 17 years of service before the date of dismissal. He was in the service of the Bank from 1966 till dismissal in the year 1983. The said misconduct on the part of the workman took place in the year 1981. It is also not the case of the Bank management that prior to 1981, the said workman had any bad record. The said workman prayed for mercy during certain stages of enquiry proceedings. Taking into consideration these circumstances, in my opinion, the Bank management should not have dismissed him from service, but should have reverted him to a lower post. Issue No. 4 is, therefore, found in the negative.

Issue No. 5

14. Under Section 11A of the Industrial Disputes Act, the necessary and proper relief can be given by this Tribunal. Therefore, in my opinion, the said workman should be reverted to the post next below the post he was holding at the time of his dismissal, that he should be reinstated in service with continuity of service but without back wages. This will be the proper relief in the present case. Hence the following award is passed. Issue No. 5 is found accordingly.

Issue No. 6

AWARD

15. (i) The action of the management of State Bank of India, Pune, in dismissing Shri A. H. G. Gazekhan, Head Clerk, from service is not just and proper.

(ii) The Bank management is directed to reinstate him in service, that he be reverted and be posted to a post just below the post he was holding at the time of this dismissal. He be reinstated in service with continuity of service, but without back wages.

The parties to bear their own costs of this reference.

P. D. APSHANKAR, Presiding Officer

[No. L-12012/325/86-D.II(A)/II(A)]

P. V. SREEDHARAN, Desk Officer

